

# Industrial Relations in India's Export Garment Sector

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## Gurugram District Cluster

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*Industrial Relations in India's Export Garment Industry:*

*Mobilizations & Employment Law Cases from Bengaluru, Gurugram and Tiruppur*

## Contents

Abbreviations.....	3
Acknowledgements.....	4
Executive Summary.....	5
I. Introduction.....	6
II. Scope and Intent of the Report.....	10
a. Research Objective.....	10
b. Methodology.....	10
i. Selection of the 25 Case Studies.....	10
ii. Data Collection and Sample Selection.....	15
c. Limitations and Challenges.....	19
III. Gurugram Garment Sector and Working Conditions.....	21
a. Structure of the RMG Sector in Gurugram.....	22
b. Workforce in the Industry.....	24
c. Working Conditions.....	28
d. Industrial Relations in Gurugram: A Brief History.....	30
IV. Findings.....	34
a. Gurugram Labour Department: Maintaining of Records and Documentation.....	34
b. Grievance Redressal and Dispute Resolution Systems.....	38
General Findings.....	38
Issue Specific Findings.....	48
V. Conclusion.....	64
VI. References.....	66
VII. Annexures.....	69
Annexure VIIA: Details of Respondents of IDIs and KIIs.....	69
Annexure VIIB: Data Received through RTI Applications on the Gurugram RMG Sector.....	70
i. Trade Unions in Gurugram RMG.....	70
ii. Unfair Labour Practices under 25T and U.....	70
iii. Stoppages and Lockout.....	70
iv. 2(k) Disputes.....	71
v. 2(a) Disputes.....	71
vi. Payment of Wages.....	71
vii. Payment of Minimum Wages.....	72
viii. Payment of Gratuity.....	72

ix. Payment of Bonus .....	72
Annexure VIIIIC: Haryana State Labour Department.....	73
Layout of the Department-State.....	73
Gurugram Labour Department .....	75
Recent Labour Law/Policy Changes in Haryana Impacting Industrial Relations.....	78
Amendments to Labour Laws .....	78
Relevant Schemes and Policies of the Haryana Labour Department .....	80
Mechanism to Address Worker Grievances/Dispute Resolution Process .....	84

## Abbreviations

<b>AITUC</b>	All India Trade Union Congress
<b>ALC</b>	Additional Labour Commissioner
<b>AR</b>	Authorised Representative
<b>Asst. LC</b>	Assistant Labour Commissioner
<b>CCC</b>	Clean Clothes Campaign
<b>CO</b>	Conciliation Officer
<b>DLC</b>	Deputy Labour Commissioner
<b>EPFO</b>	Employee Provident Fund Organisation
<b>ESI</b>	Employee State Insurance
<b>ESIC</b>	Employee State Insurance Corporation
<b>FWF</b>	Fair Wear Foundation
<b>GAWU</b>	Garment and Allied Workers' Union
<b>GSK</b>	Gurgaon Shramik Kendra
<b>IC</b>	Internal Committee
<b>ID Act</b>	Industrial Disputes Act, 1947
<b>LC</b>	Labour Commissioner
<b>LR</b>	Legal Representative
<b>MEM</b>	Mazdoor Ekta Manch
<b>MWU</b>	Modelama Workers' Union
<b>PPE</b>	Personal Protective Equipment
<b>RGWU</b>	Richa Garment Workers' Union
<b>RMG</b>	Ready-made Garment
<b>TIP</b>	Transparent Inspection Policy

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## Executive Summary

This report outlines the industrial relations between garment workers and their factory management to identify bottlenecks and obstacles that workers face in accessing justice by tracing the life of labour disputes. This report is part of a three-cluster study of industrial relations in the garment manufacturing hubs of Bangalore, Tirupur and Gurugram.

The findings of the study in Gurugram highlight that the largest share of disputes and complaints raised at the Gurugram labour department are of illegal termination under Section 2(a) of the Industrial Disputes Act, 1948 (ID Act) followed by claims filed under the Payment of Wages Act, 1936. However, in reality the actual instances of conflict in the garment industry are much higher than the quantum of the complaints filed with the labour department reflects.

Some of the key findings include:

- Garment workers agree to any step of grievance redressal only when pushed to a 'no resort' stage. Rarely do workers raise their grievances within the factory for fear of losing their jobs.
- Workers largely experienced similar issues but in the absence of unions, they lack a collective recognition and sharing of these issues, even among workers in the same factory. And therefore, their expression of grievances and subsequent struggles against the grievances remained largely individual and isolated.
- The formal dispute resolution mechanism of conciliation and adjudication has in most instances failed to secure justice for workers. In many instances workers shared feeling further harassed after raising a formal complaint.
- The current functioning of the industrial relations machinery often actively prevents unionisation in the industry, leading to a visible lack of support to the growing pool of garment workers in Gurugram.
- While the industrial relations machinery is still unable to protect workers' rights across several issues, perhaps the one that falls through the cracks the easiest is that of gendered concerns such as gender-based violence and harassment at the workplace and victimisation of women workers.
- The current system of documentation and data maintenance by the Haryana labour department does not allow easy generation of intelligible and actionable data. Data on disputes and complaints are maintained in physical registers, while those on factory compliances are maintained online via the unified returns portal database. Neither system allows officials to access industry wise information to enable them to have intelligible data that can be used to either understand or improve industrial relations. Nor can one segregate the data under different categories using varied filters to understand trends and patterns in labour relations and compliance matters.

## I. Introduction

### Indian Textile and Garments Sector Overview

India is the second largest producer of textiles and garments (Kalhan 2016) employing more than 45 million people directly and another 60 million people in allied sectors (Ministry of Textiles, Gol 2020). This makes the textile and garment sector the third largest employer in the country after agriculture and construction (FWF 2019). The industry employs nearly 60% women. However, there is significant regional variation. The workforce in the south of India comprises of a greater number of women in comparison to the north (Lercheet.al.2017).

The larger share of garments produced is pure cotton (58%) and the rest is divided between non-cotton (25%) and blended fabric (16%) (FWF 2019).

Prior to the pandemic, the industry' share was –7% of total industry output in value terms, 2% of India's GDP and 12% of the country's export earnings. India was ranked as the fifth largest exporter globally of ready-made garments (RMG), facing tough competition from neighbours Bangladesh and Vietnam (The Hindu 2020). Due to the pandemic and the global lockdown, textile exports declined in the year 2020/21 in comparison to the previous year. Provisional data suggests that textile exports dropped to \$29 billion in 2020/21 as opposed to \$34 billion in 2019/20; while the share of RMG exports declined 20.78% in 2020/21 (Preetha 2021).

During the first lockdown that began on 25 March 2020, the industry was non-functional for about 2-3 months except for a few factories that had started manufacturing Personal Protective Equipment (PPE) kits. Even after the lockdown was lifted, for the next several months, most factories operated partially, with less than usual number of workers (Wastra 2021)<sup>1</sup>.

The garment/apparel manufacturing sector can be broken into four types of establishments  
**Invalid source specified.:**

1. **End-to-end garment manufacturing:** Units engaged in manufacture of garments that first knit fabric and then cut and sew the fabric into a garment.
2. **Fabric manufacturing:** Units engaged in knitting and dyeing of the apparel. Knitting, when done alone, is classified in the textile mills subsector, but when knitting is combined with the production of complete garments, the activity is classified in apparel manufacturing.
3. **Cut and sew:** Units engaged in purchasing fabric and then cutting and sewing to make a garment, and
4. **Units exclusively engaged in printing** (sublimation, digital, screen and rotary), embroidery and finishing.

Several studies on the garment manufacturing clusters have highlighted exploitative working conditions and large-scale violation of labour laws (Geneva: ILO, 2015; CIVIDEP, 2009; Fair Wear Foundation, 2019; SLD, 2012). Additionally, Fair Wear Foundation (2019) noted that the sector is also marked by tense industrial relations with low opportunities for constructive bilateral negotiations between labour and management or even between other stakeholders. The 2019 report by Fair Wear Foundation (FWF) noted that trade union density in the Indian garment sector

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<sup>1</sup> See: <https://aepcindia.com/system/files/Annual%20T%20and%20A%20Industry%20Report-2021.pdf>

rate is less than 5%, while Mani (2011) also noted that less than 5% of the workforce was unionised. This is lower than the average union density of the Indian workforce, which is around 10 per cent of the entire workforce (ILO 2017).

### **Gurugram Garment Sector**

In Gurugram, the sector is characterised by a deeply exploitative labour regime where at the outset the employment relationship is informalised to the point that most workers find themselves in precarious conditions of work with no access to justice. Most workers have no employment contract and are barely covered under the statutory social security benefits of health and pension (ESI and PF). Workers do not get paid leave (weekly, monthly or annual) and are forced to do overtime (without additional pay or a combination of a couple hours without additional pay and additional hours at single rate, rather than the statutory double rate). They are constantly under threat of being fired without due process or retrenchment benefits. Most of the workforce is casualised – they are contract workers, daily wage workers, piece rate workers, or casual workers – all without any written record of employment, and wage theft of various kinds is common. The number of contract workers employed in apparel manufacturing factories has risen sharply over the past decade (FWF 2019). The shopfloor is riddled with instances of violations and violence against workers and constant conflicts and confrontations between workers and management (Sanhati 2014). In addition, union presence is low to negligible. Neither factory level unions, nor general garment workers unions are allowed to register and function (FWF 2019). Union-busting is rampant in the Gurugram garment cluster.

### **Labour Department**

While commenting on the industrial relations in the state, Sehgal (2018), argues that over the years there has been a withdrawal of the labour department from its role in preventing, addressing and resolving industrial conflicts in Haryana. Department officials including conciliation officers (COs) fail to recognise or acknowledge the existence of common labour rights violations in the garment sector including non-payment of minimum wages and the hire-and-fire practices of most companies in the cluster. Citing an example of denial of violations on part of the department officials in Gurugram, she writes,

The three assistant labour commissioners (ALCs) interviewed did report that the dispute that they most frequently have to address involves workers returning from leave to find themselves out of work. But they were of the view that the workers mostly leave the job voluntarily for “personal reasons” and then, upon coming back, find themselves out of work. ALC1 said, “In such cases, we do of course ensure that they get their full and final and are not left without their due wages.” According to ALC1, “The problem is that it is ‘shifting labour’. You can’t call it illegal termination actually.” Thus, in the view of ALC1, there appears to be no room for leave, duly applied for and approved by company supervisors. (p.16)

The Gurugram-Manesar industrial belt has witnessed many failed protests and outbursts by workers. Several instances of workers’ protests in the garment sector turning into a law and order situation can be recounted in the last ten years such as in March 2012 when workers reacting to the news of a co-worker being stabbed in the arm with a pair of scissors by a labour contractor had pelted stones and set vehicles on fire; in March 2014 when workers of an Orient Craft unit protested against the death of a worker who collapsed while working inside the factory; in February 2015 where workers of an unit of the Richa Group of companies rose in protest over the rumoured death of a co-worker; in June 2015 workers of Orient Craft (again) protested against the rumoured death by electrocution of four co-workers (Yadav, 2012; Sanhati, 2014; Choudhury & Jose, 2015; Yadav, 2015).



All these incidents were marked by the absence of the labour department and the presence of a formidable police force, called by the company management which quelled the protests by intimidation of workers and in most instances arresting workers. The presence of the police in matters that should be dealt with by the labour department points to a deep failure of the industrial relations system.

Sehgal (2018) writes that these outbursts are a manifestation of the malaise within the system where workers find themselves without a platform for voicing their grievances and accessing justice and therefore resort to public protests. It is not surprising then that in instances that are extreme, such as the death of a co-worker, workers in the sector are prone to react in an impassioned manner. Workers feel repressed and express themselves with sudden burst of anger but lack the wherewithal, security, support, and organization to continue the struggle. Hence it is not a claim for rights as much as it is an expression of repressed feelings.

*Even ASI Jaipal Singh was forced to admit to us that the fury of workers that erupted for two days may have been the result of anger and discontent simmering for a long time. We were told that a few days ago, a contract worker suffering from jaundice had resumed work despite not recovering fully and had died within the factory. Another incident narrated to us was from last summer, when a pregnant woman who was denied maternity leave due to her, succumbed to her injuries after her sari was caught in the blades of a desert cooler in the factory. In March 2012, in another unit of Orient Craft in Sector 37, Udyog Vihar, a worker was attacked and injured by the supervisor after some of them took leave on Sunday. -Sanhati 2014*

### **Trade Unions**

In such a scenario, unless unions are recognised and their powers of collective bargaining strengthened, withdrawing the state's role in matters of industrial relations will only leave the workers disadvantaged vis-à-vis the employers (Sehgal 2018). The presence of trade unions is a crucial aspect of the industrial relations framework providing not only a sense of solidarity and support to workers but also the powerful platform for collective bargaining to protect workers' rights. The absence of unions significantly lowers labour's bargaining capacity with employers. This in turn creates strain on labour relations and high frustration among workers who find themselves without an avenue to voice their needs and demands. An increase in workers' bargaining power is key to maintaining industrial peace (Saijpal 2020). Even a decade ago in 2011, it was recognised that the suppression of workers' right to freedom of association had a key role to play in these industrial strife (Mishra and Narayanan 2011). More recently, while writing about the spontaneous violent outburst in the Gurugram RMG sector over the last decade, Yadav (2015) argues that it was because workers were bereft of peaceful and constructive methods for resolving disputes, that they were forced to express their frustrations through protests that took a violent turn.

*Once the legal number of workers to form a trade union is reached in a factory, a list of its members, among other information, is to be sent to the Department of Labour in the relevant state. As a mean of verification, the latter sends the list with the names of workers to the factory management, which then dismisses the workers. Consequently, as the names on the list are no longer of employees of the factory, the trade union cannot be registered." -Fair Wear Foundation 2019*

It is within this context of deep labour unrest that the Haryana state government by 2018 had brought in multiple changes to the existing labour laws that would lower the protective cover provided to workers under the different labour laws and further fragment employment relationships (PTI 2018; Yadav 2015). With their integration now into the labour codes that the Indian Parliament has legislated, it becomes imperative to scrutinise the tangible impacts that these changes will bring to the existing industrial relations within the garment sector vis-à-vis workers' access to justice.

## **ILO's Work in Freedom Programme**

The ILO's Work in Freedom is a ten-year development programme that started in 2013 and is funded by UK Aid. It adopts an integrated and targeted approach in developing practices and multi-sectoral policy measures that reduce vulnerability to trafficking of women and girls in South Asian countries of origin (Bangladesh, India and Nepal) and in selected destination countries (India, Jordan, Lebanon and some Gulf countries)<sup>2</sup>.

Several lessons learnt from implementing the programme point towards important considerations within the existing labour market and labour policies in the country. A 2019 report by ILO noted the importance of strengthening labour frameworks that protect the interests and rights of workers specifically migrant workers and women migrant workers. It highlighted the focus of anti-trafficking intervention on further curbing women's labour mobility and access to the labour market instead of focussing on and advocating for just recruitment practices and decent working conditions for all workers. It specifically pointed to the strengthening of and upholding the Right to Freedom of Association as an effective means to protect the rights of migrant workers<sup>3</sup>.

These lessons are relevant to the Gurugram RMG sector that has in the recent past seen a growth of young, women migrants from source areas such as Jharkhand, Orissa, Bihar and West Bengal. Migrant workers' experience of violence and violations is often compounded in comparison to that of local labour in the same area. Their relation to the state as a migrant raises questions of citizenship rights as well as labour rights at their workplaces. This study maps the evolution of industrial relations in the Gurugram ready-made garment (RMG) sector over the past decade. In doing so it also points towards practices and trends that have influenced workers' experience of labour rights and their access to conflict resolution mechanisms. By analysing selected case studies and collating data from qualitative interviews with stakeholders, the study focuses on both workers' collective as well as individual efforts at claim-making and raising voices against exploitative practices in the industry. The effort has been to understand both the impact of existing industrial relations systems on workers' access to grievance redressal mechanisms; as well as the impact that collective and individual struggles have had on the culture of labour relations in the sector. In the context of the garment sector that is marked by the presence of informal employment relations in a formal industry, it is necessary to understand the access of such workers to the formal state-regulated processes of conflict resolution.

We hope that the findings of this study will add to the programmes' existing body of work on laws, policies and institutions that impact the lives of migrant workers, especially women migrants.

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<sup>2</sup> ILO: 2019, lessons learned by the Work in Freedom Programme. See: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new-delhi/documents/publication/wcms\\_600474.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new-delhi/documents/publication/wcms_600474.pdf)

<sup>3</sup> *ibid*

## II. Scope and Intent of the Report

### a. Research Objective

The project aims to understand the industrial relations between garment workers and their factory management to identify bottlenecks and obstacles that workers face in accessing justice by tracing the life of labour disputes. This report is part of a three-cluster study of industrial relations in the garment manufacturing hubs of Bangalore, Tirupur and Gurugram.

A common methodology was followed by all three clusters. However, based on each cluster's unique functioning this was tweaked at several places to accommodate and find ways around challenges and barriers. The section below outlines the methodology followed for this study of the Gurugram cluster with the justifications on modification from common methodology.

### b. Methodology

Initial data collection focussed on the period 2015-20. At the time of planning the project it had been decided that the period will be further extended to capture cases from 2010-14, in case of insufficient data in the former scenario and if time permits. A total of 25 case studies of industrial disputes and 9 Life History of workers were collected as primary data in Gurugram to feed the research project.

The data collection was done with two objectives:

- i.) Identifying and documenting the 25 case studies
- ii.) Mapping the overall functioning of industrial relations in the sector and the evolution of the same

Details on the Haryana and Gurugram Labour Department functioning, summary of relevant acts as well as a note on the grievance redressal machinery can be found in Annexure VIII C to the report.

#### i. Selection of the 25 Case Studies

The list of documented case studies was selected based on a larger list of conflicts-disputes that was collated by the research team. The larger list was created with the following objectives in mind:

- Identifying key areas of conflict in the Gurugram RMG sector
- Understand trends in disputes and complaints that would inform the sampling strategy.

The terms complaints, disputes and claims as used in the study denote-

**Complaints:** Used as the umbrella term to denote workers' grievances (verbal and written) raised at the workplace as well as submitted to the labour department

**Disputes:** Complaints to the labour department of grievances specifically are listed under the ID Act

**Claims:** Complaints that are filed with the labour department pertaining to grievances related to wages

This list of the universe of disputes, comprising of a total of 104 cases was created by accessing varied sources that included interviews with workers, union representatives, labour lawyers and activists in Gurugram. Fifteen individual complaints/cases have been added from the 2(a) disputes<sup>4</sup> register of a Conciliation Officer in Gurugram labour department. Some cases especially the ones

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<sup>4</sup> This register is maintained by Conciliation Officers. It records the disputes raised under Section 2(a) of the ID Act that allows individual workers to raise a dispute with the labour department.

related to large scale protests and/or factory accidents have been collected through secondary literature, particularly media reports.

The cases collected were from the period 2010-2020.

The list of 104 cases reflected that:

- About 80% of all cases were of individual workers. Fewer cases pertained to a group of workers.
- Collective disputes were low in number. Cases where any collective action of workers took place pertained to denial of union recognition and/or registration, unfair labour practices, protests, and factory accidents. Illegal lockouts and lay-offs of groups of workers were also not fought as collective disputes. Only in one case (Viva Global workers' struggle) was a case of lock-out filed by the workers.
- In several instances, labour-management conflicts were addressed via criminal complaints filed by management and often leading to incarceration of workers.
- Highest number of cases was of illegal termination of services of workers who were fired without any notice or proper domestic inquiry. In such cases, disputes were raised under Section 2(a) of the ID Act.

The pressing issues that are unique to the RMG Sector in Gurugram were identified based on this list. These include:

- i. Union-busting and unfair labour practices
- ii. Illegal termination (largely related to individual workers) including shutting down of units
- iii. Wage related complaints including non-payment of earned wages, minimum wages, bonus etc.
- iv. Employee State Insurance (ESI) and Provident Fund (PF) issues
- v. Criminal complaints
- vi. Gender discrimination and workplace sexual harassment
- vii. Lockdown conflicts and issues

Six of these issues (i-vi) have plagued the Gurugram apparel industry for a while. The seventh category (vii) has been added here to capture issues that emerged as an impact of the pandemic. As the study was conducted immediately after the first wave of the Covid-19 pandemic, data regarding concerns and challenges as an outcome of the pandemic and the ensuing lockdown were reported often. The garment industry had taken a hit due to the cancelation of orders and the two national lockdowns in 2020 and 2021. The brunt of this was felt acutely by the workers, more so by the migrant workers. In Gurugram, thousands of workers faced harsh circumstances and continue to deal with the repercussions of units shutting down, employers firing workers en masse and so on. A section has therefore been included to briefly capture some of the pressing concerns and the response of the industrial relations machinery to these issues.

The 25 cases have been selected to best represent and highlight the trends, the challenges, strategies applied, roadblocks faced etc. under each issue. The selection was done keeping in mind that that the cases reflect some of the broader trends of complaints and disputes in Gurugram as well as important cases that have had a significant impact in the cluster. The section below outlines the parameters used in selecting the cases.

### Selection Criteria

- ❖ **Patterns of Violation Reflected in the Universe of Conflicts-Disputes:** The larger list of 104 cases was categorised into types of violations (given above) and the case studies were selected to reflect these violations
- ❖ **Individual vs Collective:** In Gurugram the larger share of disputes is filed individually. Any analysis of industrial relations in the sector will therefore heavily rely on individual disputes. However, it was important for this study to document the few cases of collective action taken by workers in the past decade both to understand when workers come together to fight a collective battle as well as to highlight the importance of collective actions and their outcomes. Thus, while in the larger set of conflicts-disputes, the share of collective actions is low, the case studies have prioritised documenting collective actions and hence its share is almost equally divided in the 25 case studies selected.  
The word 'collective' here therefore has not been used in the strictest sense as defined by the ID Act under 'collective disputes' but as any form of collective action taken by workers in order to address conflicts.

The 104 cases are categorised into individual and collective cases:

- I. Individual Cases (85 of 104)
  - a. Illegal termination: 53
  - b. Wages: 25
  - c. PF related: 4
  - d. Maternity benefits: 1
  - e. Physical violence on worker and subsequent FIR: 1
  - f. Sexual harassment (not resulting in termination): 1
- II. Collective Cases: (19 of 104)
  - a. 6 workers' protests
    - i. 1 against non-payment of minimum wages
    - ii. 5 protests that turned violent
  - b. 3 factory accidents
  - c. 4 cases of crackdown on unionising efforts
    - i. GAWU registration
    - ii. Mehra Bandhu Fashions union issue
    - iii. Modelama Workers' Union registration issue
    - iv. Richa/Gaurav International union issue
  - d. 2 cases of termination of 15-20 women workers registered as lockout
  - e. 1 case post lockdown where workers were refused work in the factory based on religious identity
  - f. 2 cases of unit closure (one unit shut down during the pandemic)
  - g. 1 case (2006) where workers protested collectively against an incident of sexual harassment at the workplace

- ❖ **Formal/Informal:** Cases were also categorised and selected to reflect the type of processes followed in conflict-dispute redressal. The three categories that were identified were:

**Formal (ID Act)-** cases where complaints and disputes were raised formally with the labour department. In such cases the matter went through the state regulated processes outlined in the relevant labour laws. Informal mechanisms that may have been tried prior to registering a formal dispute have also been documented in the concerned case studies.

**Formal (Non-ID Act)** – Cases raised outside the Industrial Disputes Act: complaints that involved other formal processes such as with ESIC, police, sexual harassment committees, or submission of memorandum to district administration by a union etc.

**Informal** - cases where a formal complaint was not raised with the labour department but the grievance was settled (or remained unresolved) with management or contractor through verbal negotiations either by workers, trade union leaders, or even lawyers helping the workers. Such cases may also involve the intervention of a labour department official in an informal capacity.

**Semi-formal Cases** - cases where other authorities were involved such as the ESI/PF, IC/LC in sexual harassment cases and formal involvement of police officials have been categorised as semi-formal cases.

Based on the processes involved and the redressal machinery accessed, cases have been given the tags of formal, informal and semi-formal. Thus, while some cases may only be tagged informal, others where the worker(s) have tried to access both formal and informal processes towards resolution have been given both tags of formal and informal.

- ❖ **Availability of Documents:** An important consideration while selecting cases has also been availability and access to documents. It has been a formidable task for the team to obtain documents for the cases. And in the final selection of the case studies, cases with access to documents have been prioritised.

Unions/workers' collectives were initially not keen on sharing documents, apprehensive that disclosing of identities and sensitive information may have adverse repercussions on workers. The fear of negative impacts was primarily in cases that are ongoing (at the time of seeking the information), or even in concluded cases where a worker was reinstated in the company and was still employed there. Only on assurance that all personal identifying information will be redacted before adding them to the repository, both workers and unions agreed to share some documents. It is important to note the lack of trust in employers and labour department and fear of harassment and victimization - workers not being hired if seen to be 'troublemakers' by sharing their grievances publicly. In fact, one worker (their case has been included in our study) whose final settlement was skewed in favour of the employer, is taunted by supervisors occasionally – 'We shouldn't say anything to him or he'll file a case against us.'

Even where workers were willing to share documents (mainly in concluded cases where the worker is now employed elsewhere), none of the workers had their own case documents with them. While some said they did not recollect ever having been provided with any documents by their lawyers or unions, others said they were unsure of where they had kept their files.

In case of concluded cases, the team with the permission of the worker/s filed for certified copies<sup>5</sup>. However, this method too has not been entirely effective. In some of the older cases, the labour department could not find the case files and even when the case file was located, in many cases it was incomplete, and documents were missing. It took the department about 6

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<sup>5</sup> A certified copy is a photocopy of an original court document that a court clerk has verified true and correct. The documents can be obtained in the jurisdiction where the case was filed. Parties and lawyers involved in a matter apply for certified copies directly while those alien to the case have to provide a reason for obtaining such a copy.

weeks to give the team the requested set of documents. Researchers had to visit the department office as frequently as 2-3 times a week to press the clerk to retrieve the files.

**Table 1: List of Documented Cases<sup>6</sup>**

List of Cases	Category
<b>Attack on Unionisation and Unfair Labour Practices</b>	
Case Study 1- Modelama Workers' Union (MWU) registration struggle and subsequent retaliation	Formal (ID Act) and Informal
Case Study 2- Garment and Allied Workers' Union's (GAWU) struggle for registration	Formal (ID Act)
Case Study 3- Richa Garment Workers' Union (RGWU) registration and subsequent retaliation	Formal (ID Act)
<b>Illegal Terminations and Factory Closures</b>	
Case Study 4- Sanjay: Terminated after return from leave	Formal (ID Act) and Informal
Case Study 5- Arjun: Terminated for unionising activities	Formal (ID Act) and Informal
Case Study 6- Riaz: Terminated after return from sick leave	Formal (ID Act)
Case Study 7- Sukhbir: Terminated after refusal to re-join work on a new ID card	Formal (ID Act) and Informal
Case Study 8- Shadab Ahmed: Terminated after return from leave	Formal (ID Act)
Case Study 9- Roopmati: Terminated after raising a complaint of workplace sexual harassment	Formal (ID Act) and Informal
Case Study 10- Sunil: Terminated after refusal to re-join work on a new ID card	Formal (ID Act) and Informal
Case Study 11- Ravi: Terminated without Reason	Formal (ID Act)
Case Study 12- Viva Global Collective Dispute of Lockout	Formal (ID Act)
Case Study 13- Successful collective action taken by workers after shutdown of company unit	Formal (ID Act)
<b>Wage related complaints including non-payment of earned wages, minimum wages, bonus etc.</b>	
Case Study 14- Recovery of Delayed Wages after Termination	Formal (ID Act)
Case Study 15- Malati Devi Minimum Wages Complaint	Formal (ID Act)
Case 16- Collective action by GAWU on minimum violations	Formal (non-(ID Act)
<b>ESI/PF/Sexual Harassment</b>	
Case Study 17- Maternity Benefits Claim through ESI	Formal (non-(ID Act)
Case Study 18- Ongoing case of a worker trying to withdraw his deceased wife's PF money	Formal (on-ID Act)

<sup>6</sup> Names of individual workers have been changed to protect their identities. Cases are listed here by assigned pseudonyms.

Case Study 19- Resolution of withheld PF money through legal notice sent by worker’s authorised representative	Informal
Case Study 20- Successful negotiation of compensation for the families of two workers by GAWU after their death at their workplace (Maharani of India)	Formal
<b>Lockdown-Pandemic Conflicts</b>	
Case Study 21-Company closure during pandemic	Informal (To be taken up formally as a collective dispute)
Case Study 22- Successful reinstatement of fired workers in Chelsea Mills by GAWU	Formal
Case Study 23- Kamal: Terminated during first lockdown	Semi-formal
<b>Police Complaints</b>	
Case Study 24-Worker’s FIR filed against management for physical and verbal abuse	Formal (non-ID Act)
Case Study 25- Richa/Gaurav incarceration of workers after a violent protest	Formal (non-ID Act)

## ii. Data Collection and Sample Selection

Both primary and secondary sources were used for obtaining data for this report. A mix of four tools were used for primary data collection that included in-depth interviews (IDIs), focus group discussions (FGDs), key informant interviews (KIIs), and Right to Information applications (RTIs).

### Primary Sources

Interviews were conducted with identified stakeholders with two objectives:

#### 1.) IDIs: Interviews specifically related to the 25 case studies documented in the report

A semi-structured IDI questionnaire was developed for this purpose with the following areas of inquiry:

- a. **Basic Information-** Workers’ socio-economic profile including migrant status, source area, age and caste etc.
- b. **Experience of Worker in the Garment Sector-** Worker’s history and past experiences in the garment sector including working conditions experienced in factories, employment practices experienced in the sector, functioning of conflict resolution mechanisms in factories, and access to grievance redressal mechanisms in the factory.
- c. **Case Specific Inquiries-** This was divided into sections that reflected the phases between the birth of a conflict to the outcome of a grievance redressal mechanism (formal or informal). In each section the questions addressed stakeholders involved and their roles, processes and steps taken, support sought and found by worker, and challenges/opportunities faced.
  - Beginning of conflict
  - Resolution at the factory level (informal mechanisms used to address the issue)
  - Access to formal mechanism of conciliation
  - Adjudication
  - Post-adjudication
- d. **Worker’s Reflections on the Case**



The IDIs were held via mixed medium, some over the telephone and others in person. On an average the length of an IDI with a worker was between 90-120 minutes. In most cases workers were interviewed in two parts, (especially when telephonic) keeping in mind their schedules and time commitments.

**Life History Documentation**

With 9 workers identified from this larger pool of respondents a separate smaller interview was conducted that captured the worker’s personal journey in accessing the dispute resolution mechanism. These were largely conducted remotely over the telephone as the period coincided with the second wave of the pandemic and the ensuing lockdown. The workers whose life histories have been documented separately were chosen based on their availability and willingness to share their audio recordings on a public domain on the condition of anonymity.

**2.) KIIs: Stakeholder interviews to understand the working and evolution of industrial relations in Gurugram RMG factories over the past decade.**

Each KII had questions that were pertinent to the stakeholder interviewed but broadly divided into the following themes:

- a. **Respondent’s Basic Information**
- b. **Garment Sector in Gurugram:** Structure, types of factories, nature of employment in the sector, working conditions, presence of unions etc
- c. **Respondent’s Engagement with the Garment Sector**
- d. **Functioning of Grievance Redressal Mechanisms in Garment Factories:** kinds of violations faced by workers, addressing conflicts, negotiation with employers, etc.
- e. **Functioning of the Conciliation/Adjudication Machinery:** Role of the industry, unions and the state- access of workers/unions to the labour department, kinds of disputes raised, challenges/opportunities in redressal through state-regulated mechanisms
- f. **Impact of the Pandemic-Lockdown**

Some of these stakeholders were also involved in the cases that are documented as case studies in the report. Wherever relevant (and necessary), they were also asked case-specific questions.

**FGDS:** Three FGDs were conducted for specific purposes. One was conducted with women garment workers in order to gain insights into conflict management and dispute resolution mechanisms from a gendered perspective. Two other group discussions were conducted with workers from Magsons and Knit Craft companies related to the case studies documented later in the report.

The universe of stakeholders interviewed included

- Garment workers in Gurugram RMG factories
- Advocates and labour lawyers in Gurugram
- Union members and office bearers
- Gurugram labour department Officials
- Staff of organisations in Gurugram working on labour-migrant rights

**Table 2: Interviewee/Participant Pool**

Research Tool	Number of Participants	Profile of Participants
In Depth Interviews (case study related)	19	Garment workers, organisational staff
Focus Group	3 FGDs	• Women workers

Discussions		<ul style="list-style-type: none"> <li>• Workers from Knit Craft</li> <li>• Workers from Magsons</li> </ul>
Key Informant Interviews	18	<ul style="list-style-type: none"> <li>• Labour lawyers/advocates</li> <li>• Union representatives and office bearers</li> <li>• Gurugram labour department officials (DLC, Dep. Dir., IS&amp;H, and COs)</li> <li>• Staff of civil society organisations</li> <li>• Garment workers (including contract worker, fabrication unit worker)</li> </ul>

Labour department officials declined to give formal interviews as they would need permission from the head office. After persuasion, they agreed to answer questions informally. With all officials, these informal interviews lasted between 20-30 minutes.

Respondent details can be found in Annexure VIII A.

**RTIs:** These were filed to get quantitative data on complaints and dispute numbers relevant to the Gurugram garment sector. Data related to the complaints and disputes filed with the Gurugram labour department, between the period 2015-2020, and their outcomes was sought through these RTIs.

The questions posed through the RTIs included:

- 1.) Number of complaints raised under the ID Act and their outcomes (disposed/withdrawn/referred/pending), under both Sec2 (a) and Sec 2(k)
- 2.) Number of complaints filed under the Payment of Wages Act, the Minimum Wages Act, the Payment of Bonus Act and the Payment of Gratuity Act (separate RTIs were filed for data on each Act)
- 3.) Number of strikes/lockouts and their status
- 4.) List of registered trade unions in the Gurugram RMG sector
- 5.) Number of applications made for registration of unions, number of appeals made, number of cancellations of registered trade unions (RTI addressed directly to the Haryana Labour Department)
- 6.) List of registered garment factories in Gurugram and their units with address; total number of workers disaggregated into male and female in each unit

The RTI's were initially addressed directly to the Gurugram labour department (except for the one related to the Trade Union Act, 1926 which was filed with the Labour Commissioner's office in Chandigarh). However, the team did not receive any relevant data from the department. The usual replies were that the "data was unavailable" or that it was not "relevant to the department". Only the list of registered garment factories was provided by the Factory Wing of the department.

It is important to note that while officials in the Gurugram labour department had avoided furnishing the requested information, (in person or in replies to RTIs filed with the Gurugram District Labour Department), the team finally received the latter after addressing 9 RTIs (at the end of March 2021) to the office of the Labour Commissioner in Chandigarh. The responses were collated at the level of the circle officers in Gurugram and sent to us from the Labour Commissioner's Office. However,

there was significant delay in receiving the replies. While the RTIs were sent in the third week of March 2021, the first reply reached the team in the first week of July 2021. Subsequently, the other replies trickled in gradually all through the month of July. Information from two circles (Circle 5 and Circle 6) on data regarding complaints on gratuity and bonus payment remains pending at the time of writing this report.

The information sought and the framing of questions for each RTI was done after perusal of the Haryana Labour Department Annual Administrative Reports (2016 and 2017). The reports disclose information on complaints and dispute numbers under the different Acts for the entire state of Haryana. Thus, the team drafted the questions and data sought for in the RTIs in a format that most closely resembles that in which the department itself documents the information. This was done in order for the department to provide the information smoothly and without any confusion regarding the questions asked in the RTI applications. The RTI information can be found in Annexure VIII B to the report.

#### **Accessing case related documents:**

Case files, as mentioned earlier, were accessed through workers/unions or by filing for certified copies at the Gurugram labour department. These were of cases that were both settled through conciliation or referred for adjudication. The files received included handwritten proceedings of conciliation sessions, settlement agreements and in cases where conciliation could not resolve the dispute, failure reports.

The form for applying for certified copies requires basic information of the case including:

- Name of one of the parties of the case
- Documents applied for
- Relevant Circle Number (i.e. Jurisdiction of the Conciliation Officer)
- Signature of the Claimant or the Authorised Representative

#### *Secondary Sources*

Secondary sources such as media articles, reports written by civil society organisations, government documents etc. were used both for piecing together the report on trends in industrial relations as well as for reconstructing the individual case studies.

#### **Government Notifications/Circulars**

- *Haryana Labour Department Website*<sup>7</sup>. This was accessed for the notifications and circulars related to government policies (within Haryana) as well as department's internal changes including circulars on administrative changes if any.

#### **Court Orders**

- *The Gurugram Labour Courts I and II* are yet to digitise their records and documents. Thus, documentation pertaining to cases in the Industrial Tribunal-cum-Labour Courts cannot be accessed online through the official website.
- *Chandigarh High Court*<sup>8</sup>: Judgments including interim orders are available online through the 'Case Information' portal on the site home page. The case can be searched using multiple

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<sup>7</sup> [https://hrylabour.gov.in/home/readmore?cat\\_id=all&keyword=&sdate=&edate=&status=1](https://hrylabour.gov.in/home/readmore?cat_id=all&keyword=&sdate=&edate=&status=1)

<sup>8</sup> <https://phhc.gov.in/>

parameters including name of judge, case number and type of case, name of parties involved and so on.

- Orders are also available from the website of the Additional District and Sessions Court, Gurugram<sup>9</sup>. The online digital resource portal of the website can be accessed to search for and download the orders by case number.

### **FIRs**

- Haryana online FIR download<sup>10</sup> is restricted to the last five years. At present one can search and download an FIR lodged in 2015 to the current date. The district and the police station are necessary fields when searching for FIRs. This gives the entire list of digitised FIRs for the particular search criteria entered. Knowing the FIR number makes it easier to access it.

FIRs beyond 2015 cannot be accessed online.

- The website for Chandigarh High Court<sup>11</sup> also allows searching for a case via the FIR details. But this is available only for FIRs registered from 2011 till the present date. Cases before 2011 cannot be searched using this link.

### **c. Limitations and Challenges**

The findings of this study are drawn from detailed qualitative interviews with key stakeholders and an analysis of the 25 case studies. They anecdotally indicate trends and patterns and cannot be generalised as reflective of the entire system.

Stitching together the several threads of each case, especially older ones, was a time-consuming process. In Gurugram due to the paucity of people involved in the struggles of garment workers, it is only a handful of lawyers, activists, union representative who are active in most cases. This meant lengthy and multiple rounds of interviews with the same respondents which often inconvenienced the respondents.

At times cases that were finalised for documentation had to be cancelled because the worker later refused permission to share information and documents related to case. These were mainly for cases that were still not concluded. In one instance a worker who had initially agreed to be part of the study, lost their spouse due to an illness during the study and the team decided to not pursue them further.

Speaking to and requesting information from department officials in Gurugram was challenging for the research team. Officials were unwilling to speak with researchers for more than 15-20 minutes and in general they appeared unwilling to engage with researchers. It took several rounds of meetings and conversations to convince officials for informal interviews that mainly focussed on the working of industrial relations in the Gurugram garment sector.

While they agreed to speak informally, they denied our requests for labour department data on disputes. Several different reasons were cited by different conciliation officers that included, “it is not possible to provide such information informally”, and “outsiders cannot be given access to the dispute information related registers and it will take a long time for department staff to cull out specific garment sector information, which they cannot afford”. Only one conciliation officer agreed

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<sup>9</sup> [https://services.ecourts.gov.in/ecourtindia\\_v4\\_bilingual/cases/s\\_kiosk\\_order.php?state=D&state\\_cd=14&dist\\_cd=6](https://services.ecourts.gov.in/ecourtindia_v4_bilingual/cases/s_kiosk_order.php?state=D&state_cd=14&dist_cd=6)

<sup>10</sup> <https://haryanapolice.gov.in/ViewFIR/FIRStatusSearch?From=LFhlihIx/W49VSIbVdGc4w==>

<sup>11</sup> [https://phhc.gov.in/home.php?search\\_param=fir](https://phhc.gov.in/home.php?search_param=fir)

to show the team the '2(a) disputes register' of their circle on the condition that the circle will not be mentioned in the report.

Responses to RTIs were severely delayed and often sent without the information that was requested. The team had filed RTIs in the first week of February 2021, requesting for district level information on the number of registered RMG factories in Gurugram, and the total number of male and female employees in each of the units. Two separate RTIs were filed in the two factory wings of Gurugram I and II. While we received a list of factories (with unit address) from Gurugram II, Gurugram I responded by saying that the information was available online. Gurugram II provided the list of RMG factories registered in the areas under its jurisdiction but not the information on the number of workers employed in the units. Moreover, even though the team had addressed the second set of RTIs to the state level authority, the data for each RTI were received separately in two instalments: one response sent from the DLC, Gurugram I and another from DLC, Gurugram II. In the absence of the complete set of data for each question, compiling and analysing the data became challenging.

Often case files received were incomplete with several missing documents. And stakeholders involved in the case could not be accessed for multiple reasons including pandemic related challenges. This caused significant delays as the team either had to wait till a source was available to speak to us and add the missing information, or pursue multiple other avenues to get complete case documents. Even where stakeholders were available for interviews, often they too did not remember details about the case.

The data for this report was collected during the pandemic and in-between the two waves and the several lockdowns. Responses given by stakeholders did not necessarily factor in the impact of this phenomenon in many cases. For example, while many respondents shared that due to the sector's requirement of a constant pool of labour, labour mobility and the ease of finding employment often influences workers' decisions of entering into dispute resolution systems. However, it remains to be seen how the pandemic has impacted labour mobility and if at all it is the case anymore that workers still find it easy to enter new employment. Thus some of the findings require further exploration in the aftermath of the pandemic.

Finally, the 25 case studies documented in this report have been reconstructed through multiple sources. It has not been possible for the team to ensure parity of types of sources across all 25 cases. Thus, while the formal documents have been the backbone for building the narrative in the larger share of cases, the details and specifics within each case were gleaned mostly through several rounds of interviews with stakeholders involved in the case. The stakeholders interviewed in every case differ from one case to the other. However, for individual cases detailed in-depth interviews were conducted with the worker and this information was used to enhance the narrative. In other cases of collective disputes and conflicts/struggles, union representatives, legal representatives and/or activists that supported (are supporting) the struggle were interviewed for more details.

### III. Gurugram Garment Sector and Working Conditions

Factories in Gurugram produce for both the domestic and international market. About 70% of apparel manufacturing establishments in Gurugram fall under the MSME category, that supply to international buyers such as Mango, GAP, Walmart etc. (Ernst & Young LLP 2018). Export units largely produce fashion wear garments for women and children (FWF 2019).

Gurugram's growth as an RMG hub can be traced to the 1990s that saw changes in the size and scale of manufacturing units in the Delhi-NCR region due to the end of the quota system imposed by the Multi-Fibre Arrangement (MFA). More importantly Delhi was also witnessing the implementation of stricter rules regarding operation of industrial units in residential areas. Both these factors pushed establishments from within Delhi to its outskirts, the newer industrial areas of Gurugram and NOIDA (Roy 2009). The cluster gained prominence when Orient Craft set up one of its largest units in the area performing knitting, dyeing, processing, cutting and stitching sometime in. Other companies followed suit. Over the following years with the expansion of the sector, companies found it less viable to sustain a single unit catering to end-end manufacturing. This led to large establishments breaking up into smaller units to undertake different processes of knitting and dyeing; often under different ownership. The result has a mushrooming of establishments of varying sizes and functions spread across the cluster involved in garment manufacturing processes (Ernst & Young LLP, 2018). The sector has expanded from the initial cluster of factories in Udyog Vihar near the Delhi border to large factories in areas like IMT Manesar located on the highway to Jaipur, as well as within the city of Gurugram in Khandsa and Behrampur areas.

Ready-made Garment Sector in Haryana				
	Wearing apparel (except fur apparel)		Knitted and crocheted apparel	
Total Number of Factories	1,135		8	
Factories in Operation	586		8	
Total Number of Workers Employed	1,10,462		692	
Directly Employed Workers	72,160		619	
	Male	Female	Male	Female
	61,792	10,368	543	76
Workers Employed through Contractors	38,302		73	
Wages and Salaries (in lakhs)				
Total Wages and Salaries	3,21,259		2,921	
Workers' Wages and Salaries	1,59,195		970	
(Source: Annual Survey of Industries 2018-2019 Volume 1: Table 2 and Table 4 <a href="http://microdata.gov.in/nada43/index.php/catalog/150">http://microdata.gov.in/nada43/index.php/catalog/150</a> )				

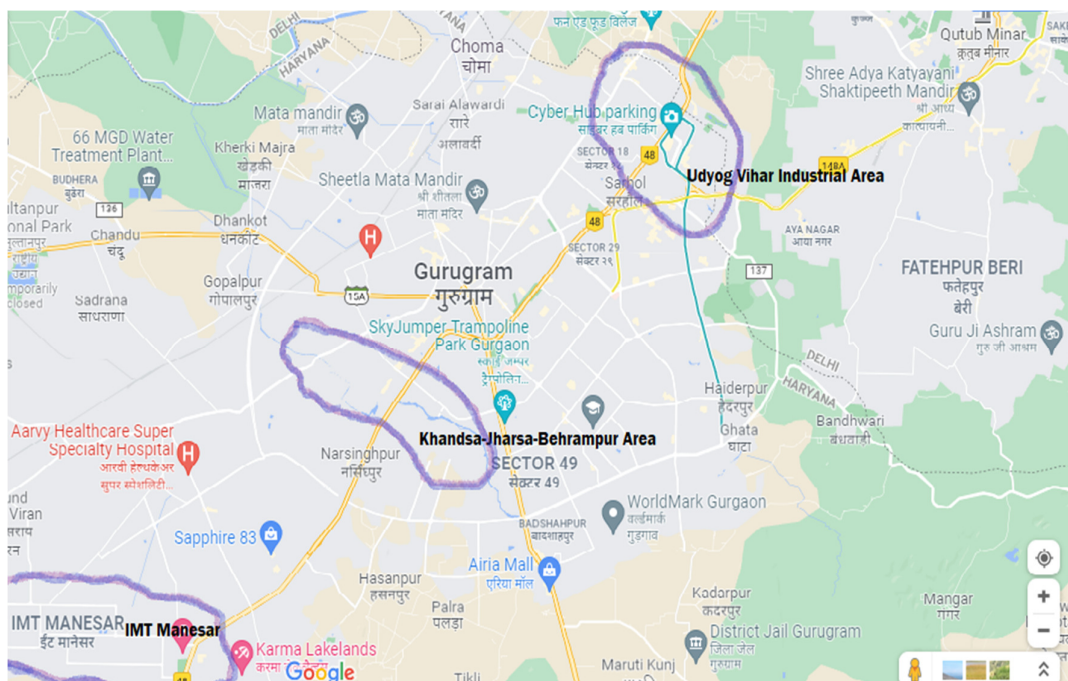
Over the years the industry has come to rely heavily on migrant, skilled craftsmen from states such as Uttar Pradesh (U.P.) as well as non-skilled/semi-skilled workers who worked as helpers from states like UP and Bihar. Currently more than 80% of workers in the garment industry are migrants (The Hindu 2021).

### a. Structure of the RMG Sector in Gurugram

(The following section is an overview of the industry in Gurugram and the nature of the workforce. It is based on both secondary data as well as primary data collected through field work.)

#### Garment Manufacturing Hubs in the Gurugram-Manesar Industrial Belt

(Source: Google Maps)



Conclusive information on the total operational RMG units in Gurugram was difficult to obtain. RTI replies provided only a partial list of factories. It was difficult to get the data informally from other sources as well. The ASI report on factories based on the NIC 2008 classification provides data by state level (given in the section above) but not district level. Even in 2006, Sehgal had pointed to this challenge of data on number of units, noting that while “the Apparel Export Promotion Council (AEPCC) lists 227 firms in Gurugram, the 2006 Gurugram Industrial Directory lists 279 factories. Attempts to get more comprehensive data from various departments of the Haryana Government failed to elicit any response”<sup>12</sup>.

Within the Delhi-NCR region, the industry, while arranged into a supply chain structure, is not however slotted into clean categorisations along the chain. In 2006-07 researchers tried to map Tier-1 garment exporters in Delhi NCR but due to paucity of information available in the public domain they finally used alternative methods of identification such as “professionals in garment industry, and social activists working among garment workers”<sup>13</sup>. A 2017 study by ILO noted that, “The structure of the industry in NCR is highly irregular, informal and fragmented with multiple tiers of

<sup>12</sup> <https://indianlabourarchives.org/handle/123456789/764>

<sup>13</sup> CEC Working Paper 2006, “Transformations and Labour in the Indian Garment Industry: A Study on Wages and Structural Changes in garment Industry in Delhi and NCR Region”, Link: <http://www.cec-india.org/libpdf/1437477829TransformationsandLabourinIndianGarmentIndustry,2006.pdf>.

Also see, “First Tier Garment Exporters in Delhi: Industry and Company Perspectives”, SLD et. al. 2007, <https://www.slideshare.net/SLDIndia/first-tier-garment-exporters-in-delhi-industry-and-company-perspectives>

production, enterprises of different sizes, numerous subcontractors and several categories of workers”<sup>14</sup>.

Segregation along the supply chain into Tier 1, Tier 2 factories can vary depending on multiple factors including size of factory, access to buyers, and the factory type, i.e., final garment manufacturers, embellishment factory, fabric manufacturer etc. A rather simplistic categorisation down the supply chain can be<sup>15</sup>:

- *Tier-1 Factories* - Factories with direct access to buyers. These factories produce the final garment that is shipped to the brands. They are generally large size factories with workers ranging between 1,000-5,000. Examples of such factories include those owned by Modelama Exports, Orient Craft, etc. These are generally factories that are involved in the process of final manufacture and export of the garment. A 2019 Human Rights Watch (HRW) report on transparency along supply chains defined Tier-1 factories as ones that “assemble, embellish and finish their goods”<sup>16</sup>.
- *Tier-2 Factories* – Tier-2 factories rarely have direct access to buyers. They are smaller sized factories that provide services to Tier-1 factories. These are mostly processing factories where the type of work can range from, part-stitching of garments, to embellishment work, as well as textile production and processing. Tier-1 factories that do not have in-house infrastructure for these processes outsource such work to Tier2 units.
- *Tier-3 Factories*- These are mostly small, unregistered factories/establishments of varying sizes. Workers employed in these can range from single digits to 20/30. Establishments like these are abundant and largely run by fabricators. Their operation is erratic and dependent on demand from above in the supply chain. Some of these factories stitch and supply full garment pieces to Tier-1 factories especially in peak seasons where the orders are high and if the Tier 1 factory is unable to fulfil the demand in-house.

A more detailed analysis of the structure of garment industry in Gurugram will reveal multiple departures from this categorisation. The only clear categorisation appears to be that of the Tier-1 factories as those with direct transaction with international brands. Segregating the rest into clean slots has become increasingly challenging over the years as the industry expanded and incorporated within it different types of contract of services some formal, others informal.

Brand supply chain data also point towards the absence of uniformity and a highly irregular structure of the industry. For example, a quick look at four major brands that have disclosed their supply chain reveals several gaps in information as well as differences in categorisation of units. At a glance it appears that Tier-1 factories refer to suppliers that manufacture the final garments while Tier-2 are ones for fabric production, processing vendors. However, this categorisation is not uniform across brands. For example, GAP<sup>17</sup> defines their units as,

Facilities from Tier-1 suppliers include cut-and-sew production, sub-contractors, and supporting units such as dyeing, embroidery, and wash units...Tier2 fabric vendors, including textile production facilities and subcontractors

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<sup>14</sup>Pg 10:[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_554809.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_554809.pdf)

<sup>15</sup> Primarily modelled from field work data

<sup>16</sup><https://www.hrw.org/report/2019/12/18/fashions-next-trend/accelerating-supply-chain-transparency-apparel-and-footwear#fddd27>

<sup>17</sup><https://www.gapinc.com/en-us/policy/uk-modern-slavery-act>



while Benetton<sup>18</sup> defines them as,

*1st tier suppliers refer to manufacturers and 2nd tier suppliers refer to processing factories (e.g. printing, embroidery, wet processes, other processing).*

The information provided in the disclosure also varies and is possibly dependent on the human rights/workers' rights associations that brands are associated with. For example, both ASOS and Benetton mentioned the percentage of male and female workers in each factory, while GAP did not. And while ASOS and GAP have both listed their factories as Tier 1 factories, unlike H&M they do not have any owner/contractual categorisation. Benetton on the other hand differentiated their factories as Vendor and Company but have provided only one address for both types. The vendor names were bigger factories like Orient Craft (OC) while the company name was of a smaller one like RK Embroidery. It is possible that the address corresponds to Orient Craft, the Tier 1 unit with direct access to buyer, while RK Embroidery is a Tier 2 unit contracted by OC.

This lack of clarity and consistency in the RMG industry can be attributed partly to the obfuscation by the industry of their transactions with contractors and subcontractor units, and partly to the lack of supply chain transparency of brands. Although the Human Rights Watch report (2019) notes that there has been an increase in the number of brands disclosing at least their Tier-1 factories in the period 2017-2019 (owing to possibly greater consumer awareness and global demand for supply chain transparency) the lack of clarity and transparency persists.

#### b. Workforce in the Industry

Recruitment into factories in the NCR area is largely through personal connections or via labour contractors and a relatively lesser proportion of the workforce is recruited directly by the company (ILO 2017). Workers in Gurugram factories are largely migrants from source areas like Bihar, Uttar Pradesh, West Bengal, Orissa and Jharkhand. The major section of workforce is male unlike the industry in southern India where the workforce is predominantly female. There has however been a rise in the total share of women workers in the recent past. This could be attributed to the recent push under the government's National Skill Development Mission to 'upskill' rural women. Specifically, Bihar's Ajeevika (SRLM) programme focuses on training and placement of young, rural women from Bihar in destination areas like Gurugram within the garment industry. At present the share of women in the industry's workforce in Gurugram is between 15 and 40% (FWF 2019). The rise in employment is yet to correspond with better paying opportunities for women, as they continue to be employed largely in the semi-skilled task of embellishment and unskilled task of thread cutting. Fair Wear Foundation (2019) reported that, "...only ten to 25 percent of machine operators are female. Virtually all supervisors are male with a few exceptions in the thread cutting section, as women are rarely promoted."

#### **Contract Work**

*For employers, the logic of using contract labour is that assigning the hiring and firing of workers to a contractor is simpler for management and generally also much cheaper than employing the same worker on a regular basis. Moreover, the contractor will ensure that no worker will form or join a union in the company and thus the employment of contract labour ensures a union free shop floor for the employer. (SLD 2012)*

The sector largely employs workers through contracting and sub-contracting employment relations with varying modes of payment - salary, piece-rate, and daily wages. This creates a pool of

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<sup>18</sup>[http://assets.benettongroup.com/wp-content/uploads/2020/03/Benetton\\_Supplier\\_List-2019\\_4.pdf](http://assets.benettongroup.com/wp-content/uploads/2020/03/Benetton_Supplier_List-2019_4.pdf)

temporary workers with informal employment relations and high job insecurity. About 60-80% of the workforce in the NCR comprises of contract workers (ILO 2017).

Types of contractors and the contracting system operational in Gurugram RMG factories is a complex web. Contractors in the industry perform multiple roles beyond their primary role of labour supply. Tier-1 factories contract out several processes, such as processing of the fabric, washing, etc. to smaller units which may be operational under contractors. Sometimes fabrication units that produce completed garments, ready to be shipped by Tier-1 factories are also operated by contractors (SLD 2012). Explaining this mode of operation, the 2012 report by Society for Labour and Development (SLD) states:

*A fourth model is where production itself takes place outside of the company premises. In this case, the company engages a contractor and provides the raw material and accessories needed for manufacturing the intended garment. The rate per unit is determined between the company management and the contractor after the contractor has proven his ability to make the required garment to the satisfaction of the company's quality control department. The contractor in turn may have one or more small sweatshops with the requisite machinery. This "outsourcing" model of contract work in the garment industry has been on the rise in Gurgaon over the last few years.*

In the NCR region they also supervise the workers whom they supply to the Tier-1 factories and pay their wages. In case of outsourced home-based work (largely embellishment work), contractors mediate the production between the primary factory, the fabrication units and the home-based units (ILO 2017).

#### **Labour Contracting System and Contractors**

The garment industry in Gurugram does not follow any one specific model of operation under the contract labour system. The study by SLD (2012) highlighted multiple modes of operation and roles of the labour contractor spread across the sector. It concluded that the preferred mode of operation was where a factory would employ both regular and contract workers. The latter's supervision would be under the contractor who would generally hire a local, often goon-like supervisor to 'discipline' workers and keep them from unionising. Their wages were paid by the contractor who in turn was paid by the company. This works as an optimum model for the company which now has a smaller share of regular workers to be directly responsible for but can also provide their records during inspections and audits (including buyer audits) as proof of employment of regular workers (SLD 2012). A decade later, obvious subversion of the law aside, this model continues to remain the preferred mode of functioning for most RMG factories as the share of regular workers continue to dwindle.

It should also be clarified that regular worker does not imply that these workers necessarily have employment contracts and protections of labour laws. In most cases it means that their employment is stable and not as precarious as the bulk of the workers. And they may be receiving statutory benefits of ESI and PF. However, they may not get paid leaves, legally mandated overtime rates, gratuity, retrenchment benefits, bonus etc.

Factories now not only continue to hire workers through contractors, they have also devised other methods to obfuscate employment relations. Over the last decade there has been a growing fragmentation of the system leading to more and more factories hiring multiple contractors. For example, a fairly common practice now is of companies hiring several different contractors on one floor, responsible for different assembly lines. Each contractor then supplies a smaller number of workers and is only responsible for the supervision of a particular assembly line. Factories can contract out an entire floor to one contractor, they can contract out one or a few assembly lines to a

contractor and alternatively multiple contractors may be given charge of different assembly lines on the same floor<sup>19</sup>.

*“The extent to which contract workers have seeped into the textile and garments industry can be seen in textile mills in Panipat. Such has been the shift that now there are no regular workers in any of the mills there, only contract workers. All work on piece-rate basis. None of the mill owners need to pay any social security benefits to these workers...and this has become the case now even in garment manufacturing factories.” -Advocate. A*

This further complicates the working of the contract labour system in RMG factories. As per the Contract Labour Act it is illegal to hire contract labour for jobs that are of essential nature of work in the factory. However, across industries, use of contract labour even for essential and perennial nature of work has become the norm. Hiring multiple contractors in-charge of different assembly lines adds to the difficulty of tracking unregistered contractors (employing 10-20 workers) and their operations. Most of these contractors are in fact former garment workers with considerable years of experience who have gone on to become petty contractors. They provide a small number of workers to the company mostly based on kinship ties and avoid company registration since they employ low number of workers. Both the principal employer and the labour contractor though are supposed to register with the labour department under the Contract Labour Act, 1970 when employing/supplying contract labour and both are supposed to submit regular returns regarding the same to the labour department. Larger contractors are compliant with some of the labour regulations such as ensuring statutory benefits of Employee State Insurance (ESI) and Provident Fund (PF) as well as ensuring regular payment of wages even though the wages themselves hover near minimum wage levels. Such contractors are considered ‘good’ employers by the workers who prefer to be employed by such large contractors rather than the smaller petty contractors.

### **Contract Workers in RMG Factories**

Contract workers, can be segregated into multiple types, mostly marked by the absence of formal employment relations. The conditions of their hiring and their work are largely flexible, moulded to the production needs of the employer. In Gurugram and the NCR region, contract workers may be hired on a daily-wage basis, on a piece-rate basis or on a monthly wage basis. Several studies have indicated that there does not seem to be any basic minimum guarantee of rights that necessarily follow for any of the three kinds of labour systems used in a factory. Fair Wear Foundation (2019) reported that contract workers receive no non-wage benefits and in 70 percent of cases no minimum wage. However, a study by Mezzadri and Srivastava (2015) noted that contract workers received wages mostly at par with directly employed workers, but the pool of workers had little to no job security. This coupled with low levels of unionisation ensures that workers are under greater control of the employers (ILO 2017). Women workers are largely contract workers but there is a smaller percentage that is hired directly<sup>20</sup>.

Contract workers are systematically disowned by the employer; hence little effort is made in providing grievance redressal mechanisms to this pool of workers within the workplace. The 2012 study by SLD found that the company often withdraws itself from the conflict resolution mechanism, putting the onus on contractors. Contractors on the other hand rarely listen to issues and either fire the worker or shift them to another workplace.

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<sup>19</sup> Data from interview with GAWU representative and office bearer on 13.04.2021.

<sup>20</sup> Ibid.

From the workers' account of the contract labour system, it is very clear that the management of the company performs no grievance redressal role at all as far as contract workers are concerned. The contractors dislike performing any constructive role in dispute resolution when it comes to the grievances of workers. The normal practice is that workers who raise any grievance are illegally terminated from the job instantly. Instead of constructively engaging with workers, they resort to violence for immediate solutions to problems. (SLD 2012)

### **Employment Categorisation within RMG Factories**

Much like the confusion regarding the structuring of the industry, the types of employment within factories do not seem to follow a clear pattern in Gurugram. Within registered Tier-1 companies, employers maybe employing labour through multiple channels and under multiple employment forms. It is difficult to define a clear system that is followed in Gurugram in terms of employment categories and contract work.

For example, significant variations exist among top Tier- 1 companies. Export House 1, hires all three categories of workers in their factories: daily wagers, piece-rated and salaried workers. And workers are largely hired directly through the company. In Export House 2 factories on the other hand there are fewer daily wage workers and more salaried workers. Within these, it is impossible to always categorise a certain type, such as daily-wage or piece-rated workers, as only contract workers. For example, in Export House 1, piece rated workers are hired directly through the company. But in other companies, piece rated workers may be hired through contractors who get a commission depending on the work done by each worker. Export House 3, has a larger share of contract workers than directly hired workers<sup>21</sup>.

It is also difficult to accurately assess which department is more prone to deploying contract workers. According to the Garment and Allied Workers' Union (GAWU) since about 80-90% of garment workers in Gurugram are contract workers therefore it is possible that contract workers are spread across all the departments<sup>22</sup>. But the spread can vary in different establishments.

*Increase of piece-rated workers:* Interview respondents (especially workers) shared that in the past few years there has been an increase in the hiring of piece-rated workers. Different reasons were cited for this including that companies prefer piece-rated workers on the assumption of greater productivity. Advocate B shared that the absence of proper leave conditions often prompts workers to choose piece-rated work instead of salaried work. This was also echoed by workers who were interviewed. Salaried workers are not provided even the legally mandated leaves thus often forcing them to choose the more precarious piece-rated work.

*Piece rate tailors make more or less the same amount of money per month that a salaried worker makes, but they have the freedom to work when they want to and then tend to other work if required. Salaried workers may get other benefits like PF and ESI but no casual or earned Leaves. They are almost like slaves to the company."*-Sukhbir, Garment Worker

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<sup>21</sup> Interview with GAWU representative on 13.04.2021.

Export House 1 has 10 units across the Gurugram-Manesar belt; Export House 2 has over 25 units spread across the Gurugram Manesar belt and Export House 3 has 14 units as per the Haryana Labour Department website. Data accessed on 24.08.2021.

<sup>22</sup> Ibid.

### c. Working Conditions

Majority of the workers in the RMG factories in Gurugram (and NCR) are migrant, contract workers marked by the precarious nature of their employment including the absence of formal employment relationships. The very nature of their employment precludes their job security, making them vulnerable to hire and fire strategies, absence of social security benefits and paid leaves, and more importantly no proof of employment (ILO 2017). Lack of proof of employment is a significant hindrance in their access to justice under the formal redressal mechanism outlined in the Industrial Disputes Act, 1947.

Most common violations within factories include low wages that sometimes fall below stipulated minimum wages; long working hours; overtime payment below statutory rate; abusive behaviour by supervisors including verbal, physical and sexual abuse, absence of social security benefits; and an absence of written contract (Lerche et al. 2017, Bhattacharjee 2016, Roy 2009). Further, the exploitative conditions affect men and women disproportionately due to the inherent patriarchal biases that underline the functioning of all systems and institutions.

#### *Working Hours and Overtime*

The ILO (2017) reported that between the three clusters of Bangalore, Tirupur and NCR, the latter had the worst practices of long working hours. The normal 8 hours workday is regularly stretched to 9 hours, and workers are forced to work over-time shifts for up to 5/6 hours both during lean and peak seasons of production. Fair Wear Foundation (2019) reported that among the issues of violations received by them from workers in the Delhi-NCR, working hours was the most non-compliant issue especially for security guards for whom standard working shifts are of 12 hours with no overtime payment.

#### *Wage Theft*

Wage theft in the garment industry is an established phenomenon that denies workers their rightful dues by either delaying their wages, arbitrarily deducting a part of their wages, non-payment of overtime money, and non-payment of wages.

##### Non-payment of Minimum Wages

Nearly 70% of the factories in Gurugram do not pay their workers the stipulated minimum wages (FWF 2019). Denial of minimum wages to garment workers in Gurugram factories has been an issue that has been voiced multiple times in the past few years by unions like GAWU and CITU. In 2017, about 100 workers led a protest to bring focus to the issue (Chowdhury 2017).

##### Non-payment of Overtime Wages

Overtime work is legally remunerated at double the wage rates. However, in Gurugram, there are different practices followed for remunerating overtime work. Sometimes workers are paid the standard double rates for the first two hours of overtime work and then single rate for work after that. While in other instances either they are paid only single rates for all hours of overtime work or not paid at all in case the production target is not met (FWF 2019; ILO 2017).

#### *Occupational Health and Safety*

Safe in India (SII) reported alarming numbers of workplace accidents between 2015-2019, largely in the auto sector. These accidents left many workers injured for life. The Haryana government, taking cognizance of the growing issue of workplace safety in the middle of the pandemic set up inspection

committees that would visit factories to investigate these accidents (TNN 2011). Although SII largely tracks accidents in the auto sector, about 20% of the complaints they deal with are from the garment industry. Media articles have also highlighted several incidents of workplace injuries in the garment sector, some fatal, in the past few years caused by boiler bursts and fire (Jha 2018). Other complaints, especially by women workers include standing for long hours leading to back pain and issues of varicose veins (The Wire 2018), working for long hours without any toilet breaks often increasing risks of contracting urinary tract infections, as well as working for long hours without water breaks.

### *Trade Unions*

The sector in the north, especially in Gurugram is marked by a low presence of registered trade unions, especially at the factory level. Many have attributed this to the presence of the large pool of flexible labour. However, given the stable presence of the pool of workers in the area, other reasons for low presence of trade unions in the industry must be explored and understood. Unionisation is systematically resisted by management including union busting tactics of firing and transferring workers who participate in trade union activities (FWF 2019; The Circle 2017) as well as through physical intimidation and threat (Mezzadri 2017). In addition, by filing false criminal cases against workers, employers engage in union busting by cancelling and/or delaying their applications for registration (Shyam Sundar 2012).

Precarity of employment gives management leverage to exert extra-economic control over workers. Most of the contract workers are also circular migrants, who often spend varying periods of time between their native villages and Gurugram depending on the production cycles (ILO 2017). This too poses a challenge in organising them, especially at the factory level, since workers often move between different factories based on the contractor's directions; as well as on their own due to temporary nature of employment (lack of employment in lean season) and prevalence of hire-and-fire tactics. Although unionising is challenging in this belt, the ILO (2017) reported that efforts by the Garment and Allied Workers' Union (GAWU) has had some success in organising at factory level. However, the organising efforts have not translated to the establishment of a registered factory level union till date. This is due to delays in registering the union by the labour department giving ample time for management to engage in union busting tactics<sup>23</sup>.

### *Violations are Compounded for Women Workers*

Existing patriarchal social norms perpetuated within the factory spaces make women workers more vulnerable to additional gendered violations and discriminatory practices. These can range from sexual harassment (verbal, non-verbal, and physical) to denial and/or withholding of wages, hiring primarily for low-paying tasks, lack of maternity benefits, and dismissals due to pregnancy (SLD 2014).

While in the NCR region, a gender pay gap has not been reported, however occupational segregation on the shop-floor confines women to lower skilled and lower paying tasks such as thread cutting, handwork and embellishments. Even when hired as machine operators/tailors they are not assigned the more complicated patterns that pay more, or the parts of the garment that pay more such as cuffs and collars. Those are reserved for male tailors/operators. Very few women are employed, if at all, as sample tailors which is a highly skilled category with stable employment. Very few to none are employed in layering-cutting, washing, dyeing, pressing tasks, or as supervisors. Women workers are

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<sup>23</sup> Interview with GAWU representative and office bearer on 13.04.2021.

also among the first to be fired during lean periods as well given a break inservice before completion of five years to avoid paying gratuity (FWF 2019).

Sexual harassment is rampant and, in many instances, used as a disciplining mechanism for female workers (LWV 2017; SLD 2014). Women workers are low in numbers and mostly work in a male dominated physical environment under supervisors who are also predominantly male.

A common practice is to keep young girls separate from older women. The Wire (2018) reported:

*Women workers in some factories also complained of age and gender-segregation. An older woman worker in H&M's supplier factory in Gurugram, Haryana, said: "As we enter the factory, we are asked to form two separate lines: one for young girls and another of elder women. They keep us segregated. Young girls work on a different floor than the older ladies. So, in the end, we have no idea how they behave with these young women workers.*

#### d. Industrial Relations in Gurugram: A Brief History

This section gives a brief overview of the evolution of industrial relations and history of unionisation in the Gurugram RMG sector. The section is based on interviews with union representatives and labour lawyers who have worked in this industrial cluster, specifically with garment workers.

##### **Early decades of lawlessness: Suppressing workers' right to freedom of association**

Summarising the decades since the early 2000s, Ashim Roy, a senior trade unionist shared that in the early days the industry then was marked by a culture of lawlessness. Industrial relations were nearly non-existent with workers neither having access to conflict resolution processes within the establishments nor state regulated legal processes. The industrial area in Gurugram was relatively new and lacked an established industrial as well as a union culture. He shared that contract labour in Gurugram was not organized and permanent labour did not want to organize as they were satisfied with raising their wages by shifting value from contract labour to permanent labour.

This created a culture of violence and workers were subjected to physical abuse by employers and management representatives. Workers suffered emotionally and physically while employers enjoyed almost complete impunity.

*"The company has in past done horrific deeds. They can kill workers and throw their bodies in the gutter at night."-Riaz, Garment Worker*

*"There was absolute lawlessness in Gurgaon then. Workers were beaten up, there were instances of workers being kidnapped, a girl had also been raped and murdered and things were always hushed up." – Ashim Roy, Senior Trade Union Leader*

Similar views were shared by a GAWU office bearer who shared that in the 2000s the legal machinery was either blind to the actions of employers, or worked only in their favour. This he felt was a deliberate attempt to suppress workers' rights and keep unionisation at bay.

Organising workers in this atmosphere required not only a collective-raising of workers' consciousness and awareness of their rights, but a deeper investment towards holding the state and industry accountable. Although central trade unions had tried to invest in organising workers in Gurugram, Roy remarked that the sheer amount of investment and resources required to sustain any organising activity was overwhelming. The challenges were compounded and it was difficult to think beyond forming a workers' collective.

*“When I had started work in Gurugram in the mid 2000’s, garment factory workers were not organised at all. No one paid any attention to their plight. There were isolated efforts by central trade unions to organise but they remained unsuccessful.”-Advocate B*

Among the central trade unions, there is only one instance reported in the press of AITUC supporting the struggle of the Fashion Express Karmachari Sangathan (FEKS) workers during the mid-2000s. But the union could not sustain the struggle. Although it began with great promise and had garnered a significant amount of support, the struggle was eventually unsuccessful<sup>24</sup>.

*“The struggle started out strong and gained a lot of ground. But it was not successful. The company shut down overnight and the employer fled the scene. What could be done? There are so many challenges in the garment industry, how does one carry on a struggle to its end?”-Advocate B*

One of the earliest workers’ collectives initiated in Gurugram of garment workers employed in the export manufacturing units was Mazdoor Ekta Manch (MEM). The initial work comprised of mapping both the garment industry (location, working conditions, supply chain, labour rights violations etc.) and the colonies where garment workers lived. MEM served as a platform for workers to collectivise and organise themselves. After a few years of work by MEM and allied platforms (women’s rights group Nari Shakti Manch, cultural group Tarang, and the Legal Aid cell), the Garment and Allied Workers’ Union (GAWU) was formed in the late 2000s. Two decades later, they continue to struggle for registration of the union.

Another independent union that tried to build a presence in the Gurugram garment industry was Workers’ Unity which was active during the years 2008-2015. By 2011-2012 the union had approximately 600-700 members. The union started off as a worker’s collective with the main aim of raising consciousness, generating awareness and building a feeling of solidarity among workers.

*“Workers’ Unity was not as much a union as it was a platform for discussion for the workers. It was like a club where they could talk about their issues and seek support and help from each other. But no one was willing to engage in a protest or strike.” – Advocate B*

Workers’ Unity slowly disintegrated after suffering setbacks that began around 2013-2014. Adv. B shares that although they had about 600-700 members across the industrial belt, none of the workers were willing to protest against their companies to demand their rights. The reluctance to engage in a large-scale strike was not just due to their insecurity around job loss, but also due to real, practical issues. *“Workers’ Unity did not have sufficient support and resources. In the event of a strike and loss of work, albeit temporary, the union was not capable of supporting workers financially and securing their basic needs of food. They were also not equipped to provide workers with alternate income generation sources if they lost their jobs”*, he shares.

### **Shift in culture: GAWU’s contribution<sup>25</sup>**

In many ways, GAWU’s entry and engagement especially in the early years contributed to a key shift in industrial relations in the sector, from “a despotic framework and culture of extra economic coercion to a rule of law framework”.<sup>26</sup> Supported by the national independent trade union federation, the New Trade Union Initiative (NTUI), GAWU’s organising efforts helped to bring the apparel manufacturing sector within the realm of industrial relations.

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<sup>24</sup> For details on the FEKS struggle see Sehgal 2006, Section IV, p. 30-33.

<sup>25</sup> Based on discussions with Ashim Roy on 13<sup>th</sup> and 20<sup>th</sup> of August 2021.

<sup>26</sup> *ibid.*



*Gurgaon was a “jungle raj” in the past. None of the labour laws were implemented. No factory paid minimum wages; PF used to be deducted but not deposited; workers were also abused verbally and physically. When we started out the union led several struggles against big companies. And because of this in the last ten years, a lot has changed in Gurgaon. The culture of physically beating workers has been almost eliminated. Even implementation of minimum wages and PF/ESI laws has improved. - GAWU Office Bearer*

In the early 2010's GAWU had actively immersed itself into organising workers and this period saw a number of wide scale protests by workers against company malpractices. GAWU organizers along with the factory workers would sit on indefinite strikes outside the factory gates forcing employers to meet their demands and/or sit at the negotiation table with them. Whether it was to protest against the death of two workers due to factory negligence outside Maharani of India in 2013, or against the kidnapping of a worker and union leader by Viva Global in 2010, or against the onslaught of unfair labour practices by the Modelama management on their workers who were members of the Modelama Workers' Union (MWU) in 2013, GAWU consistently organised and supported workers' struggles.

*I think there has been a change in the sector. Earlier factory management staff behaved almost like bouncers. Now that blatant hooliganism has stopped. And even the management I think does not want to engage in such stark illegal acts like kidnapping workers. – Advocate E*

GAWU repeatedly used legal processes to access dispute resolution mechanisms and bring a minimum level of accountability in the industry. In all the struggles they supported, GAWU addressed conflicts through the resolution processes of the industrial relations framework. For example, in all the three cases mentioned above, GAWU involved the labour department from the start by filing complaints and raising industrial disputes. The repeated attempts at engaging the department finally forced the state machinery to pay attention to the plight of workers in Gurugram. It forced the department to finally acknowledge garment workers in Gurugram and recognise their struggles.

*The existence of an agency that has the legal capacity to fight battles and to get legal provisions implemented for workers changed the game. Company managements have been therefore forced to recognise GAWU.-Ashim Roy*

Analysing GAWU's contribution to the shifting industrial relations culture in the garment industry of Gurugram, Ashim Roy shared that the first phase involved establishing a rule of law in the industry. It brought visibility to garment workers and their struggles. And established GAWU, a union, as a representative of workers with the capacity to fight legal battles and get legal provisions implemented. GAWU achieved this at a time when Gurugram lacked a vibrant civil society to support the struggle for upholding democratic rights. In the second phase, with the innovation of the concept of wage theft and the myriad forms it took, plus filing complaints of unfair labour practice - the struggle for enforcement of minimum wages as well as statutory benefits such as provident fund (savings for retirement) and bonus (deferred wages) became important. GAWU filed several client representations under Section 7A of the PF Act (attending & contesting in case of a quasi-judicial enquiry) and got factory-wide enforcement of Provident Fund (not just for the workers it was representing). As a result, most of the larger garment factories are now PF compliant. In addition, many factories now give one month's wages as bonus to all workers, regardless of their employment relationship with the employer. This is a significant achievement.

*Earlier if around 5% workers were getting their bonus payments, now that figure would have increased significantly to maybe around 40%.- Ashim Roy*

GAWU's contribution to the union movement and the labour struggles of garment workers in Gurugram has also brought international recognition of worker struggles. By consistently engaging with international networks such as the Clean Clothes Campaign (CCC) and being a constitutive part of the Asia Floor Wage Alliance (AFWA), holding brands and buyers accountable for the plight of the workers in their supply chain, GAWU has been successful in creating pressure on manufacturers.

*It was difficult to get companies to come to conciliation sessions ten years ago. Now, even if they are reluctant, if it's a GAWU case they will ensure that they come for the sessions - especially Tier-1 companies. They know GAWU is a formidable force here in Gurugram and that we also have links with brands. They can't just ignore us anymore. We have that much influence."* -GAWU Office Bearer

### **Current Scenario**

The sustained investment by GAWU in its early years brought garment workers from the wilderness of invisibility to being recognized both by employers and the labour department. In spite of such gains, because of the weakness in unionising and collective bargaining, while there has been an increase in the number of disputes being registered and complaints being filed, the final outcome is not always favourable to the worker. As explained in detail in the subsequent sections, cases of garment workers often languish in the adjudication process, often taking over a decade to reach a conclusion. Workers are trapped in an endless back and forth of legal processes while companies almost always have leverage over the individual worker in the fight. Roy shared that although GAWU's efforts in the past decade had brought garment workers within the realm of labour laws, employers strategised and began subverting the law itself. For example, they found ways to reduce labour costs through multiple modes of wage theft, and successfully reduced collective struggles to individual claims of workers.

At present, workers still face insurmountable challenges in organising themselves.

*"Workers are divided into piece rate, temporary, contract workers and so on. It is difficult to unionise them. And then there is the atmosphere of threat. Largely workers are contract workers. And the contractors are the influential, powerful men of their own villages. They have contacts with the ruling party. So workers work under a constant atmosphere of threat and intimidation."* -Advocate A

GAWU is still struggling to get the union registered for almost a decade now. Several other factory level unions also continue to face similar challenges in both organising and for state recognition.

## IV. Findings

### a. Gurugram Labour Department: Maintaining of Records and Documentation

Our experience with the labour department during the field work for this study shows that the reluctance to share information is partly a result of labour data management systems that do not organize information in a useful manner to allow for extraction of relevant information. The section below details this as well as analyses the impact of incoherent documentation and record keeping on industrial relations and access to justice.

#### **1.) Complaints/disputes registers are not maintained industry wise**

Researchers were repeatedly told that culling out data on garment factories in Gurugram over a period of last five years, from piles of written registers would be a mammoth task for the department staff. This is because neither are the registers maintained in an industry specific manner, nor is the type of industry mentioned when writing down the factory names. The information entered in the 2(a) disputes register of the only circle that we were given access to, included:

- Name of worker
- Name of factory (no mention of type of factory; at times the address was also missing)
- Date of filing dispute
- Status of dispute

It is evident that the department would hesitate in sharing the information primarily due to the sheer effort it would take the staff to go through each register, check their data base for each factory to cull out only RMG disputes and complaints and draw up a final list. Department officials were also not forthright in explaining to the research team how they maintained their registers. The registers we accessed informally list out complaints filed by workers without documenting the issue in each case. Only the status of the case is entered next to it i.e. disposed/withdrawn/settled/filed etc. According to department clerks this register includes complaints of payment, of termination and several other different issues. But they were vague about whether these cases differed from those entered in the 2(a) register or the registers maintained under other Acts such as Payment of Wages, Gratuity etc.

As per the ID Act (Sec 75), the only register specifically mentioned that is to be maintained by COs is the Settlement Register (Form O). However, it seems that officials maintain multiple registers that include at least a dispute register, a register for cases that have been referred for adjudication, and a complaints' register (maintained by both Labour Inspectors and Assistant Labour Commissioners).

## Settlement Register Form O (ID Act Sec 75)

### The Industrial Disputes (Central) Rules FORM O

(See Rule 75)

#### Register - Part I

Sl. No.	Industry	Parties to the settlement	Date of settlement	Remark*

\*Whether the settlement was effected at the intervention of the conciliation machinery, or by mutual negotiations between the parties, may be indicated here.

#### Part II

Should contain one each of the settlements in the serial order indicated in Part I.

Source: <https://www.advocatekhoj.com/library/legalforms/rules/index.php?Pno=industrialdisputes.php>

### **2.) Officials could not provide an analysis of garment specific conflicts/disputes**

Of the six circles that the industrial area in Gurugram is divided into, the team was able to contact five AssistantLCs but only three agreed to speak to the team. However, none of the three could provide sector specific information. They provided an overall experiential understanding of conciliation across sectors and some insights into possible causes of conflicts in the garment sector. However, they maintained that due to the sheer load of cases they deal with, unless the sector was relevant to the specifics of the case, or the company involved had multiple cases filed against them, it was impossible for them to analyse industrial relations in a specific sector.

In addition, in the absence of a practice of documenting the type of factory when entering a dispute into their registers, it was also not possible for them to provide a quantitative understanding of the kind and share of disputes from RMG factories in relation to other sectors.

### **3.) Implication of the self-compliance returns by factories**

With the central government's policy<sup>27</sup> on reporting compliance through unified return forms, submitted online, factories and establishments are now required to submit one form that includes compliance related information on labour law regulations that specifically comes under the purview of the Factory Wing of the Labour Department.

This move ties in with the other changes including the key change in the inspection system of factories where labour inspectors (LI) are now provided the list of factories that are to be inspected by the office of the Chief Inspector of Factories of each state. The list is finalised by a computerised system for each quarter. Lis thus do not have the authority to conduct surprise inspections on their own any more. The only clause that allows for factories, other than the ones generated through the centralised system, to be inspected is in the event of a complaint against the factory by unions/workers.

Among other implications related to the macro environment in which industrial relations systems continue to change, the points below capture the implication of this new system on the

<sup>27</sup><https://pib.gov.in/PressReleasePage.aspx?PRID=1539007>

department's record keeping and documentation and therein its impact on the working of the department vis-à-vis industrial relations.

*a. The system does not allow for easy generation of information, making it difficult for department officials to regularly check for issues in compliance*

According to officials in the factory wing of the Gurugram Labour Department, the information submitted online by the several thousand factories cannot be filtered to glean information based on varying criteria. The database cannot be sorted to even categorise the total factories into industry specific lists. For example, the department's database cannot create a filtered list of garment factories from the total number of factories registered in Gurugram and it cannot create a list of factories with disaggregated information on the number of male and female employees. This information will have to be created by first manually sorting through the table to list the garment factories; each factory form will then have to be opened, the data for male and female employees searched and entered into a separate table. A mammoth manual task for which no department has the budget to dedicate staff to do, and also because they do not feel the need to access and/or analyse such information.

The research team was shown the portal that can be accessed internally by the department and the clerk even pointed out multiple entries that were fake (an entry with a random alphanumerical name and in many cases an empty form) in the total list of factories that shows up in the portal. The data has not even been cleaned to reflect only actual entries. The clerk shared that the information can only be modified by officials in the head office in Chandigarh. In any case, there does not seem to be a system in place whereby the head office in Chandigarh solicits feedback from officers on the ground or delegates cleaning up of information to local staff under the jurisdiction of DLCs.

This system impacts the ability of the district labour departments or field offices to check factory level compliance of labour laws. The software does not make it easy for officials to check indicators on different compliance measures sector-wise or based on laws related to contract labour, gender-discrimination etc. in order to spot discrepancies.

It is interesting that department officials did not seem to think that collating and maintaining this kind of data was important for the department itself. Perhaps because of the TIP, the department is authorised to only inspect the factories' whose names are generated by the office of the Chief Inspectorate of Factories, Haryana. Thus, department inspectors have no authority and no requirement to conduct checks and inspections on their own. And in turn they do not feel the need to maintain databases that can give them quick information on defaulting factories.

*b. Implications on factory compliance*

Without a system to monitor data submitted by factories, factories are free to report as they wish without the pressure of any immediate scrutiny or penalty. In fact, officials too were of the opinion that with self-reporting it was possible that much of the information submitted by the factories may not be correct, especially with regard to number of contract workers employed. They were however quick to give the benefit of doubt to the factories as they reasoned that while they may have declared a certain number of workers while submitting the form, due to the flexible nature of employment especially in the garment sector, it is possible that in a few weeks post submission the total number may have changed.

If this is indeed the case, then the self-reporting system raises the question of compliance with provisions of the contract labour law that requires both the principal employer and contractor to

register with the labour department, seek a license/permission to deploy a specific number of workers for specific tasks in the factory for a specified period of time. Whether the self-reporting system is capturing these points of compliances or rendering them invisible and thereby redundant requires further investigation.

*c. Incorrect information given by department officials*

Officials in the department categorically denied the presence of contract labour in export garment factories. The response was that large export houses do not employ contract labour due to strict global compliance codes. Only smaller units, such as fabrication units could be employing contract labour in their view. Another explanation to justify the reporting of minimal contract labour in large export manufacturing factories was the requirement of highly skilled labour that the company may be outsourcing to contractors since it is a very specific and limited requirement.

This is in complete contrast to the vast amount of documentation that exists about the employment of contract and temporary workers in the garment industry, as well as with responses and experiences shared by workers in garment factories who have repeatedly shared the precarious working conditions in factories due to high percentage of contract, daily wages, and piece-rated workers even in many units of large export manufacturers.

Even government documents accessed from the labour department's website contradict the Gurugram labour department's emphasis on the absence of contract labour in factories. For example, a circular<sup>28</sup> dated, 30.08.18 seeking permission to inspect a list of factories under the Transparent Inspection Policy(TIP) lists a unit of Richa and Co. that has not been inspected since 2015 and according to records has 270 contract workers and only 80 registered workers.

A reason for this confidence in the department's position of "no contract labour" could be attributed to "evidence" generated through compliance forms submitted by the factories themselves. While being shown a few randomly selected forms submitted by factories, the team saw that in fact in most of these forms, factories had declared that they did not employ any contract workers. Again, in the absence of further scrutiny or verification, it seems convenient for the labour department to assume the self-compliance submissions as being accurate.

*d. Public access to data*

This system also obviously creates issues for clerks in replying to RTIs seeking sector specific information on various criteria. This could further explain the reluctance of the department in providing information on male/female workers in each unit. All information needs to be manually culled out as the software does not capture data in a way that can be easily sorted and filtered as discussed above.

Procuring data related to the numbers of complaints/disputes filed by workers and their subsequent status has been a challenge for the researchers. Labour department officials in Gurugram were not willing to share the information even though the information is technically in the public domain. The document on Proactive Disclosure<sup>29</sup> uploaded by the Haryana Labour Department on its website too acknowledges this; however it is vague and ambiguous about the actual sharing of information. For example, on page 95 of the document, while under the section on e-Services it states that, "...the

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<sup>28</sup>[http://storage.hrylabour.gov.in/uploads/labour\\_laws/Y2018/Sep/W2/D10/1536577753.PDF](http://storage.hrylabour.gov.in/uploads/labour_laws/Y2018/Sep/W2/D10/1536577753.PDF)

<sup>29</sup> The document can be accessed at

<https://hrylabour.gov.in/staticdocs/rtaauthorities/Proactive%20Disclosure%20under%20the%20Section-4%20of%20the%20Right%20to%20Information%20Act%202005.pdf>

*Labour Department understands its responsibility of divulging information vis-à-vis the activities, policies, citizen charter, etc. that will go a long way in creating a trustworthy and cordial relationship between the Department and the Citizens.”*, in practical terms it only provides a list of the portals that are available for the citizens under the various services offered by the department and not links to available data for public use.

#### b. Grievance Redressal and Dispute Resolution Systems

*“The laws were made for ensuring labour rights but their implementation is faulty. Workers have to go through many sacrifices just to get these laws implemented. They are victimised, they get dismissed, transferred, police cases are lodged against them, the list is long and it continues to work this way.”*- Advocate A

This section is based on an analysis of the case files and interviews with lawyers, union activists, garment workers and staff of organisations that work closely with workers in Gurugram. As mentioned before though the data is anecdotal in many instances, however it raises important questions related to the labour relations machinery.

We list general findings, followed by specific findings related to illegal termination of employment; complaints related to wages, ESI/PF, and union registration; other issues such as filing of police cases, pandemic related complaints and gender specific complaints.

**Documentation of 25 case studies and associated case documents can be found in the repository at <https://indianlabourarchives.org/handle/20.500.14121/3463>**

#### General Findings

##### ***I. Instances of Caste-Based Violence***

Corroborating findings of the vast number of studies on the garment industry, during field work for this study, workers shared that while it is common-place for all garment factory workers to face verbal abuse daily from their supervisors and managers, at times, caste-based abuses are also used by the latter. A community organiser from GSK also shared similar observations.

*“Supervisors are generally from the upper-caste. Workers on the shop-floor are from a wide spectrum of caste and class. But when abusing workers and screaming at them, there is a growing trend of supervisors using caste-based slurs for the ones who belong to the SC categories.”* -GSK Community Organiser

In case studies 23 and 24 (Manoj and Kamal respectively) highlight this form of abuse in the factories.

##### ***II. Absent or Non-functional Grievance Redressal Systems in Factories***

During interviews workers shared that rarely have they worked in factories with established systems for grievance redressal. In many instances workers categorically said that factory management had not informed them of such committees even if they existed.

They shared that in some factories resolution within the factory is generally done by local goons hired by the management. At times security guards are also instructed by the company management to intimidate and even physically harass workers. For example, Sammi Chand, (Case Study 25) was beaten up by the company security guard because he had arrived a few minutes late to work. The incident led to violent protest ending in the incarceration of workers from the company.

*Had the management been working in our favour, then this incident wouldn't have happened. Who is a guard to beat up a worker? How does he have the right to commit such an act? Unless the*

*management supports or encourages him in such behaviour, he won't dare to do this. Ideally what should happen is that even if you want to punish a worker for coming five minutes late, the guard should take the worker to the in-charge and if the in-charge so wishes he can then either send him home or maybe say he'll strike off an hour from his work. But then for this to happen, the in-charge needs to have time to deal with this sort of case. In-charges refuse to engage with such issues. So guards take the matter in their own hands. What is the point of beating someone over this? -Jaideep, Accused Worker in the Case*

Section 3 of the ID Act, 1947 (and of the IR Code, 2020) requires the establishment of functional Works Committees in factories employing 100 or more workers as platforms for addressing worker grievances and conflicts. In industrial establishments employing twenty or more workers, Section 4 of the Act requires the establishment of Grievance Redressal Committees for resolution of disputes arising out of individual grievances.

ID Act 1948, Section 3 / IR Code 2020, Section 3.

**Works Committee.**—(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer.

(2) The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

(3) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

According to a GAWU representative, even in factories that claim to have established Works Committees, these mostly exist on paper and are non-functional, or the worker representatives appointed are biased towards the management. During their long struggle for recognition and against aggressive management attack, the Modelama Workers' Union (MWU) with GAWU's support had engaged in several rounds of talks with the Modelama management. One of the outcomes of these talks was for the management to establish a Works Committee as per the ID Act. "They did finally form the Works Committee, but it was of no use because all the members of the Committee were basically management favourites and would work for the management. So, it was only an eyewash", they shared.

### **III. Workers Rarely Raise Grievances in the Factory**

*"If you've put forward your demands for your rights then who will hear you? If you had stayed silent, you could have survived in the industry, but you raised your voice. Obviously, you will not be tolerated."*— Sumit, Garment Worker

Across all categories of respondents interviewed for this study, from workers to labour lawyers, all agreed that resolving conflicts with the factory management is nearly impossible for individual workers.



*“It is not possible to stand up to the management about anything. If anyone complains they are fired right away. They’ll say we don’t need you in the company. After that who will dare to complain about anything?” – Prerna, Garment Worker*

Workers shared that they would rather endure the exploitation silently than confront management. They shared that they were intimidated by their company management and lived in perpetual fear of losing their job. With livelihood and survival at stake, it is challenging for co-workers to stand up for each other as well, as often it is these workers who are punished or harassed in order to intimidate rest of the workers. “Workers would rather not become the face of the complaint”, feels Ahmed of Saajha Manch-Mobile Vaani, an organisation that supports workers in their access to justice.

*“Even if a worker goes to the personnel department to complain, no one listens to them Instead the worker is told that if you don’t work properly then why have we hired you? To sit and stare at your face?” -Woman worker, FGD*

“Issues if raised at all within the factory are more to do with ‘safe topics’”, shared a labour lawyer “such as availability of potable water and clean toilets.” For other issues such as wage theft, leaves, long hours of work and so on, workers are forced to remain silent with the sword of unemployment hanging over their heads.

#### **IV. Individual Workers Lack Support in Resolving Conflicts at the Factory Level**

Solidarity among workers inside the factory remains low in Gurugram. Advocate A shared that the existing socio-cultural divisions among migrant workers in the sector often pose barriers to a sense of unity among workers. The different employment types along with their different service conditions then, add to the divisions among workers. In such a scenario a single worker who faces any issue finds it impossible to resolve grievances with the management on their own.

*Workers are divided. But the employers are all united. They may have business competition but they will not harm each other. But there is so much division between workers that they can harm each other. This division is taken advantage of by the employers who stand united. -Advocate A*

*Many workers don't raise their voices because they want to remain in the good books of their supervisors, so as to not ruin their chances for a possible promotion. And these people will prevent any other worker from raising their voices also. – Hemant, Garment Worker*

Roopmati (Case Study 9) was regularly victimised for months before finally being fired after she had stood up to the management for a worker who was being physically beaten up by their supervisors. She was posted in different departments and even in a different factory unit and verbally abused by her supervisors. Although she stands by her actions, Roopmati feels that much of what she endured was because she was alone in her fight without any support from co-workers.

If on the one hand the assertive and vocal workers are victimised and held up as examples to intimidate the co-workers, favouritism is also used to demonstrate to workers the benefits of being ‘obedient’ and ‘keeping to their work’.

A few workers also felt that without legal support, when a worker does raise a grievance with the management, they are either dismissed or in case a resolution is reached, it is generally on disadvantageous terms.

## **V. Higher Skilled Workers are Better Equipped to Resist Exploitation**

A GAWU office bearer shared that they have seen many tailors quit their jobs if they were not happy with the wages or if they felt exploited. Due to the high demand for skilled tailors in the industry, it is relatively easier for them to find work elsewhere. And even if they do not find a job, they can start their own tailoring business.

*If it's a Tailor, more often than not if they have not been given the correct per piece price for their work, they'll fight with the management. The management will also probably bow down since finding skilled tailors is difficult. And even in case the management does not bow down, the worker will just walk away. They know some other company will immediately hire them. Such is their demand. – GAWU Office Bearer*

However, full-piece tailors are mostly confined to the sampling department. Production tailors or operators as they are called now stitch only a part of a garment, such as the collar or the handcuffs and so on. The assembly line system of production has resulted in deskilling of workers, making them easily replaceable. Most of the skilling centres too only teach workers how to operate a sewing machine and stitch in a straight line. Some skilling centres may teach clients to sew the higher paying tasks such as collars and cuffs. This deskilling then obviously impacts workers' bargaining power with management as well as their ability to opt out and start their own tailoring business.

*Now there is uncertainty even among tailors. No one tailor makes the entire garment piece. The Skill India training centres have brought in this trend of teaching partial skills- learn how to stitch a collar, learn how to stitch cuffs etc. The so called 'skilled' workers are purposely given partial knowledge. So they won't have enough skills to be secure of their ability of income generation.–Advocate B*

## **VI. "Good" Workplaces**

While conflicts occur almost on a regular basis across factories, there are a few companies that ensure compliance on some basic rights and benefits. They tend to comply with laws that address immediate needs of workers such as payment of bonus money, setting up informal mechanisms for sexual harassment, paying wages on time and so on<sup>30</sup>. Since other workplaces fail to even deliver on these basic rights and decent work conditions, any relief is welcome and creates a perception among workers that these companies and contractors are 'good' employers. Management of such companies is seen as benevolent and kind. The workers then generally overlook other violations they face in the company. In their cost-benefit calculation, any relief from everyday stress and harassment is welcome and outweighs monetary losses.

## **VII. Workers Hesitate to Escalate Complaints to the Labour Department**

*Of course, they are scared of raising a dispute. They feel that the company may victimise them in some way, blame them for something they have not done, lodge a police complaint against them. -Advocate A*

Generally workers agree to raise a dispute and approach the labour department only when they have been fired. And even then, many are hesitant to engage with the full fledged disputes

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<sup>30</sup> Exploring details of the type of factories that fall in this category, or whether this is a company level practice etc. was beyond the scope of this study. However, while talking about such factories, workers used company names and not specific plot/unit names.

resolution mechanism since it is time consuming, resource intensive, difficult to sustain and gives ample opportunity to management to intimidate, threaten and even harm the workers.

*“Workers who have taken up cases against their companies have often been blacklisted, preventing them from getting employment in any other factory. Management also hires local goons to threaten workers and/or their families. Sometimes these can also be physical threats.” – Hemant, Garment Worker*

Workers prefer to seek new employment rather than raise industrial disputes. Advocate D shared, that workers generally prefer to forsake payment dues, when the amount is low, instead of raising a dispute with the company.

*How can a worker who earns five to six thousand a month sustain a case against a company? How is that even possible? I just want my case to get over now. Even if I don't get the money, I am fine with that. But it has been ten years now and I am just tired. -Shadab, Garment Worker (Case Study 8)*

Until a few years ago it was easier for workers to express their discontent by voting with their feet and hopping between jobs. However, with recent changes such as de-monetisation, impact of the GST taxation system, and restructuring of the industry as a fallout of the pandemic, workers are finding it increasingly difficult to find work, shared Rakhi Sehgal, a labour researcher and activist.

This process is even more difficult for women workers, who tend to be the last ones hired, and first ones fired and that too for a miniscule number of jobs in the garment factory. Most respondents (labour lawyers and union representatives) shared that, women workers hardly raise any disputes or complaints unless it relates to maternity benefit claims, and even then, societal norms, lack of knowledge about maternity benefits, low valuation of their own work, lack of family support, results in very few women coming forward to make claims and raise disputes.

Workers also have little faith in the labour department and labour courts. Ahmed (Saajha Manch) shared workers conflate the 'industry' with the 'labour administration' since both, often block access to justice.

*Judges kept changing all the time. If the judge is good, awards judgements in favour of workers, they will not last beyond 10-15 days. They will be changed immediately. -Shadab, Garment Worker*

### **VIII. Numbers of Disputes and Claims Raised much Lower than Actual Incidents of Conflicts (or Violations)**

Officials in the Gurugram Labour Department repeatedly claimed that they hardly receive any complaints from the garment workers and interpret this as a reflection of healthy labour relations in the industry.

*Yes, maybe cases of termination reach us once in a while. But we have hundreds of cases that keep coming up every day. Here in Gurgaon so many cases come from just the auto industry. Looking at that one will not really say that a large number of disputes come from the garment industry. It is not much in comparison. -DLC, Gurugram Labour Department*

In an environment of robust industrial relations, with high union density and healthy collective bargaining, this interpretation could have been valid. However, in the absence of unions and collective bargaining, lack of formal complaints in Gurugram is instead a sign of the lop-sided power equation between employers, the labour administration/dispute resolution system on the one hand and the very precariously employed workers who come from weak socio-economic backgrounds and most vulnerable social groups, on the other hand.

The journey from raising the issue within the company, to efforts towards informal resolution, seeking support for raising a formal dispute to finally raising the dispute is in an arduous, difficult one. The number of workers that finally get filtered through this process to reach the labour department is far and few. So, lack of formal disputes raised with the labour department is not an accurate metric for measuring the health of the industry.

#### **IX. Increase in Disputes Raised in the Last Decade**

Although it is still challenging for workers to engage with the formal process of dispute resolution, all union representatives and lawyers agreed that there has been a gradual increase in the number of disputes and complaints from 2010 till now. Advocate B, who has been working in the area for more than a decade and a half, attributes this to a growing presence of worker support systems in Gurugram.

*In 2010 I don't really remember organisations that were working with garment workers at all. There was some support of trade unions in the mid-2000s, but that waned by 2010. Legal support was negligible. But now there are more lawyers on ground and the access to legal representatives also works as a motivating factor for workers to pursue a case.— Advocate B*

At present, in Gurugram there are civil society organisations that support workers in accessing their claims such as Safe in India that works on workers' occupational safety rights, Saajha Manch that provides a platform to workers for sharing their grievances and finding solutions for grievance redressal collectively or Gurgaon Shramik Kendra that also provides a platform for workers to collectivise.

In addition, despite the lengthy and on-going battle for union registration, the presence of Garment and Allied Workers Union (GAWU) and with their support the fight to register factory level unions, even when thwarted, does put employers and labour department on notice that workers' collectives, agency, and voice cannot be ignored, and that violations and illegalities will be challenged not ignored and even brought to the notice of brands and consumers. According to senior trade union leader Ashim Roy, this has resulted in a shift from a despotic culture and use of extra economic oppression (use of goons etc.) to a legal culture, hence the increase in the number of claims and disputes being filed at the labour department. However employers have also been adapting their strategies in response, thwarting the shift to a collective bargaining framework.

#### **— Disputes Filed are Largely of Illegal Termination of Service**

Multiple sources of data (RTIs, interviews with labour lawyers and labour department officials) show that an overwhelmingly large share of disputes raised with the labour department is of illegal termination of service under Sec 2(a) of the ID Act, 1948. Between 2015 and 2020, out of a total of 1285 number of complaints and disputes<sup>31</sup> received by the Gurugram labour department<sup>32</sup> 1040

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<sup>31</sup> Information sought was for complaints and disputes filed under:

- Sec 2(a) of the ID Act
- Sec 2 (k) of the ID Act
- As ULPs under Sec 25 T and U of the ID Act
- Stoppages and lockouts
- Payment of Wages Act
- Payment of Minimum Wages Act
- Payment of Bonus Act
- Payment of Gratuity Act

were disputes under Sec 2(a) of the Industrial Disputes Act (followed by 210 complaints filed under the Payment of Wages Act).

*The labour department is like a last resort for workers. While working in the company no one wants to highlight any issue even in the company, so going to the labour office is out of the question. Only when their employment is finally terminated do they realise that they now have nothing more to lose and therefore consider the possibility of a formal complaint process. – Ahmed, Saajha Manch, Mobile Vaani*

Case studies also suggest that often workers who file disputes against illegal termination have a history of multiple breaks in seniority in the company that they have not raised or complained about. For example, both Sukhbir (Case Study 7) and Riaz (Case Study 6) had been laid off and issued new ID cards multiple times during their employment in their respective companies, however neither had complained about this because of fear of management retaliation. It was only when they were finally dismissed without reason that they approached a union and filed their demand notices<sup>33</sup>.

#### **X. Filing Multiple Complaints**

Two lawyers shared that to pressurise companies into settling through conciliation, along with filing demand notices, they file multiple complaints related to issues of wage theft under different acts such as Payment of Wages, Bonus etc. Since in almost all cases, workers have faced multiple violations, raising separate disputes for these (along with including them in the demand notice) gives a slight leverage to the worker in the view of the two lawyers. This strategy seems to be successful for workers in smaller companies as the companies want to avoid multiple cases, and often agree on settling through conciliation.

*This works well with smaller companies who have lesser resources than the big, established companies. They feel pressured into finishing the case at conciliation so that the other cases are withdrawn. Otherwise, they know that they'll probably have to keep appearing for those which will be a waste of their time and money. – Advocate D*

#### **XI. Unsupportive Labour Department**

Across interviews with workers, all felt that officials in the labour department were generally unhelpful towards workers and seemed to come across as speaking the employers' language. Approaching government departments individually is daunting for workers as they feel intimidated by the unfriendly environment of the labour department, labour courts, police stations, as well as by their lack of knowledge of official and legal proceeding.

*Officials in the labour department do not really make the worker feel very comfortable. They also tend to favour the management and actually help the worker in very few cases. - Labour Lawyer*

*The officials (in the labour department) and the company management are all locals in the area and have a lot of influence. So they tend to side with each other and ignore the poor migrants. –Sumit, Garment Worker*

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-Trade Union Act- total applications for registration in the RMG sector in Gurugram; appeals filed after rejection; cancellations of registrations; list of registered trade unions in Gurugram RMG Sector.

<sup>32</sup> The data on complaints under the Payment of Bonus and the Payment of Gratuity Act was not provided by Circles 5 and 6.

<sup>33</sup> Demand notice is a pre-legal notice sent by the worker to the company stating their grievance and making claims, hoping to settle it without having to initiate legal proceedings.

Workers and their lawyers shared that often officials in the labour department are dismissive and rude towards workers, especially when workers approach them individually, without a collective or union backing. This intimidates the workers who are already wary of institutions and institutional mechanisms.

*I have seen department officials interacting with individual workers and they can be rude and biased...heavily bureaucratic. But with the Rangi workers their attitude was completely different only because they were in a full group and attended every session in a group. -Ahmed, Saajha Manch, Mobile Vaani*

## **XII. Management Strategies**

Case study analysis as well as interviews highlighted several management strategies that were (are) often successfully used to their advantage.

In Arjun's case, the practice of management forcing workers to sign on blank sheets of paper at the time of recruitment or in the course of employment was used against him when management presented a fabricated resignation letter with Arjun's signature on it. Sukhbir was also asked to sign on a blank paper after he was reinstated post conciliation. He had successfully resisted the pressure to sign the sheet of paper.

*Garment workers are mostly migrants with little to no legal awareness. And most of them are not literate. When they join the company, the management forces them to sign on many papers that they possibly do not read. They are even made to sign on blank papers. – Advocate E*

Another worker, Sanjay also shared that he was asked to sign on a blank paper at the time of joining employment. When he refused, he was told his hiring was contingent on the signature. *"I was told, don't worry we won't take your property from you...They do this so that if at any time they want to fire you, they can fabricate a document to show as your resignation letter. At times they give you a whole bunch of papers to sign one after the other, it is difficult to keep a track and specifically check if there's a blank paper in between."*

It is common knowledge that workers employed informally (contract, piece-rate, daily-wage workers) even in the formal sector lack appointment letters and other proof of employment even though management collects workers' identity proof, photographs etc and asks them to sign on papers (which they usually do not understand). None of the women in the FGD with women workers had received a joining letter in any company they had worked in.

*"They keep all our photos and ID proofs and all their paperwork in a file and never share it with us. When buyers come to visit, they show it to the buyers to paint a rosy picture about their employees. Casual workers like us are given leave on that day or we are taught to tell the buyers that we get Rs. 9000."-Woman worker, FGD Kapasheda*

This practice makes it extremely difficult for workers, especially contract workers, to hold the manufacturing company, the principal employer, accountable for violations of labour rights.

*"During a dispute, the company will refuse to acknowledge the worker as their own. And the worker may not have even known that he was a contract worker. The company will produce the ESI, PF registration with the contractor, and the pay slip of the contractor and prove that the worker was a contract worker."-Advocate C*

According to Advocate B, worker representatives tend to work around this challenge by trying to obtain some proof of employment in the company even if that is a *"kachcha"* [informal] attendance record. Rakhi Sehgal shared, that workers also hold on to old, expired gate passes (a prized

possession among workers and the first document the manager confiscates when firing workers) and use them as proof of working at the said premises of the company.

*“There will definitely be some temporary written record of attendance, or at times co-workers with proof of employment in the company can be sought to testify that the worker had in fact been employed in the company. The second is a bit tricky as currently employed workers will not testify, so one has to seek out workers who no longer have any stake in the company.”-Advocate B*

Another well-known practice is the use of muscle power to intimidate workers, especially to withdraw a case or to settle. Local goons are hired to ambush workers even on roads and at times in their homes. Sanjay, Arjun and Manoj have all been subjected to threats and even physical abuse by local goons.

*“The contractor (a woman) landed up at her house at 12 in the night with 10 men and was threatening her to take back the case. They were carrying knives. But she stuck her ground and stood bravely and told them that if they abuse her then she will also hit back but will not withdraw the case.” -A woman worker talking during an FGD about another woman worker who had filed a case against her employer*

### **XIII. Workers’ Involvement in their Own Cases**

During interviews some workers were unclear of the resolution process including what communication took place between their legal representatives and the employer’s representative. They shared that since the language of communication was often English, workers found it difficult to comprehend exchanges, even if it happened in front of them.

*Arjun: They used to take me to the court and just ask me to narrate what happened to me. After that what happened, what were the proceedings that I am not aware of.*

*Interviewer: How do you mean? Why were you not aware of the proceedings?*

*Arjun: What they used to write on their papers how would we know? We are not literate that we’ll understand their writing.*

*Interviewer: So because you could not read...*

*Arjun: They never told us what was happening. How long would the case go on, where we winning or losing...They never told us anything.*

In another case, Shadab, who was fighting for payment of full back wages is unclear why the court ruled in his favour but only awarded him 50% back wages instead of the full amount. The judgement (in English) clearly lists the reasons for the reduced award but even after seven years after the award, Shadab is unclear about the reasons listed in the judgement since no one has explained it to him.

### **XIV. Awards are Unimplemented**

*“We filed Shadab’s dispute in 2007. After a lengthy process there, the court finally gave an award in the worker’s favour in 2014. But the company did not comply and the labour department could not do anything. So, the case is stuck at the level of execution of award till date in 2021.”- A lawyer in Shadab’s Case*

Shadab’s case is not an isolated one. Often workers’ struggle does not end after a favourable award from the labour court. The process involving compliance by the employer can be as (if not more) challenging as the dispute resolution struggle where the labour department proves ineffective in forcing companies to comply with the court awards.

*No, the court orders are not executed by the companies in several cases. Companies do not even respond to the labour court orders. -Advocate E*

Tier-1 companies seem to be more likely to comply with awards even if they are in favour of the worker. Advocate D feels that this is because for these companies complying with a court order that asks them to pay some compensation amount to a worker outweighs the investment they may have to make in terms of time and cost if the case is stretched due to non-execution of the award. Smaller and mid-level companies on the other hand are the ones that may cause issues and refuse to cooperate since many times, complying with the order may financially disadvantage the company or employers may be unwilling to appear as having lost the battle with the worker. Conciliation agreements on the other hand, he shared, are more readily complied with as the employer in most cases are involved in drawing up of the settlement terms.

#### **XV. Lawyers Prefer not to Enter Adjudication Processes**

Advocate E shared that they preferred to settle disputes at conciliation stage since in most cases workers are unable to furnish necessary documentary proof. And when such cases proceed to adjudication, more often than not, the award is not in favour of the worker.

Most labour lawyers also agreed that settling conflicts at the factory level was the best-case scenario. Advocate C shared that, informal resolutions can lead to better outcomes since the management was not forced to enter conciliation sessions or go to court.

*“It is always best to resolve the issue through company level negotiations than enter the formal dispute resolution system. The latter runs the risk of dragging on for years and may not always result in a favourable outcome for the worker.” – Advocate C*

*“It is profitable for the company to push for adjudication also because they know that it is difficult for workers to find decent legal representation. The gain for lawyers in representing workers at labour courts is very low. They will gain Rs.1000 maybe, for one appearance, and lose Rs. 5000 by not engaging with other clients during that time.”-Advocate B*

However, they also agreed that in Gurugram, workers who have been able to succeed in resolving conflicts at this level have mostly been those who have been supported either by a union or by a lawyer. For example, Vinay (Case Study 19) did not have to enter the formal dispute resolution mechanism after his lawyer intervened and aided resolution through company level discussions. However, prior to this Vinay’s own efforts in solving the issue with the company had proven futile.

#### **XVI. Role of Unions and Legal Representatives**

Workers who were interviewed acknowledged that the success of their struggles and even their access to any grievance redressal mechanisms was possible due to their association with a union (or a workers’ collective). However, a few workers also shared their disappointment with the existing unions in Gurugram and their legal representatives.

Arjun while reflecting on the reasons for losing his case at adjudication, shared that he felt that the union that was supporting him had negotiated with the management and abandoned him (and his co-worker). He shared that he had come to know of union office bearers meeting management representatives separately without informing him. And on asking his legal representative, he was not given any clear answers as to the content of the meeting. Since a few weeks post this meeting Arjun lost the case, he shared that the timing and the union’s vagueness around the meeting are suspicious.



Another worker shared that he regretted associating with the union and felt that they were a “money-making” machine. At least three workers alleged that one of the union office bearers took a high percentage from the settlement money awarded to the workers.

Other workers shared that often their legal representatives (generally associated with the union) keep them in the dark about the case details. For example: in Arjun and Shadab’s case given above. Another worker, Kamal (Case Study 23) also shared that he felt his legal representative was hesitant in sharing updates of the case and was unable to give satisfactory reasons for the delay in filing the dispute.

## Issue Specific Findings

### *Illegal Termination of Service Disputes*

Lack of formal employment contracts, appointment letters, and protective cover of labour laws are the root causes of most issues in the garment industry, exacerbated by an active discouragement of union formation by both employers and government.

#### ***I. Grievances Related to Termination of Services***

As discussed earlier, a large share of disputes and complaints filed from garment factories in Gurugram are of termination of services. The practice of hiring workers without providing appointment letters outlining a clear employer-employee relationship, forcing workers to sign on blank papers either at the time of hiring or subsequently, forcing unreal targets on workers that they are unable to complete and then firing them blaming incompetency, etc. are some of the managerial tactics of avoiding responsibility for the workers they employ. Actual reasons for termination can range from the company not having any work during lean periods to disciplining workers who raise their voices against company practices and/or are engaged in union activities and employers fire them to ‘make an example’ of them. Workers who oppose exploitative practices or demand their rightful dues are generally labelled as miscreants and ‘trouble makers’.

Summary dismissals appear to be the norm rather than the exception. No show cause notice is given to the worker, no chance to present their perspective on the charges levelled against them. Domestic inquiries are rarely held in cases of termination as shared by all stakeholders interviewed and mentioned in all the demand notices filed for cases of illegal termination services of individual workers as documented in this study.

#### ***– Leaves***

Lack of leaves, a long-standing issue in RMG factories, needs to be addressed urgently.

*“Once a few workers had not come to work on a Sunday and the next day they were beaten up by the management for being absent.”-Sanjay (Garment Worker) on the practices of a Tier 1 factory.*

Sanjay (case study 4) was not allowed to resume work after he returned from leave (taken to address his wife’s health in the village), Shadab and Riaz (case studies 8 and 6) were both refused employment after returning from sick leave. In some instances, workers have been taken back to work after some amount of pleading with supervisors.

In two of the three cases above, workers who went on leave did not fulfil any formal processes of leave application. They did so not because they were unaware or intentionally subverted processes, but because their supervisors through some excuse or the other led them to believe that oral permission was enough for them to take their leaves. But, upon return lack of written

procedure and permission was used to charge them with absenteeism from work resulting in summary dismissal – an excessive response for a first-time offence even if viewed as an offence or act of indiscipline. In the absence of employment contracts outlining terms and conditions of employment or application of Industrial Standing Orders – Model or Certified, violation of statutory leave provisions, personalized rather than professional conduct of managerial staff all contribute to this widespread problem.

– **Lay-Offs Common in Factories**

Another ‘open secret’ in garment factories is the practice of frequent laying-off workers not only during lean periods of no work, but also as a practice to break the seniority of workers. It is done primarily to avoid contract workers being able to claim permanent worker status (if they work continuously beyond 240 days in a year) as well as to avoid payment of statutory benefits such as gratuity.

*“My wife had been issued three new ID cards during the four years she worked in the company. That is what they do, after every year, they give a break for a day or two and then they ask for the worker to re-join the company with a new ID card and a new PF account also.” – Suman, Garment Worker*

Riaz and Sukhbir (Case Studies 6 and 7) had been laid off and re-issued ID cards a couple of times before their employment was finally terminated. This practice is now so well established that rarely is it expressed as a violation by any worker. It is only when a worker’s employment is finally terminated does this come up, if at all.

*“Any worker who is about to complete five years is fired through some excuse or another so that they don’t get gratuity. They’ll ask the worker to complete some high target and the worker will be unable to do it and then they’ll fire the worker.” –Sukhbir, Garment Worker*

– **Factory Closures and Mass Firing of Workers**

Closure of units or mass firing of workers has not been a frequent occurrence in garment factories in Gurugram, but it is not completely unheard of. For example, Rangi International shut down in 2018 resulting in loss of employment of around 50 workers.

The practice of firing workers in groups during lean periods of work is common but does not result in the filing of collective dispute under 2(k) of ID Act or as lockouts. Thus, the numbers on lockouts<sup>34</sup> and collective disputes filed remain low while that of individual terminations are high.

Unit closures, as well as large scale firing of workers, have become a growing concern recently during as a fallout of the Covid-19 pandemic. GAWU estimates that about 3-4 factories have shut down in 2020 while many more factories are struggling. Additionally, factories that resumed operations did so with limited functioning. Many workers lost their jobs due to large scale lay-offs. Although the study did not explore this aspect in detail, it is worthwhile to mention here that lay-offs may have adversely affected vulnerable minorities more than others. For example, in May 2020, at least two instances were reported of refusal by a garment company to allow

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<sup>34</sup> As per RTI data, between the period 2015-2020 there has been only one incident of stoppage/lockout in the RMG sector in Gurugram, in Dhir International. The outcome was not reported in the reply as the office had not compiled the data for years 2019 and 2020.

Muslim workers back at work.<sup>35</sup> Even during the field work for this study, respondents shared that in many factories women workers were particularly affected.

*“I have not been working now for the last 15 days. I used to work in a company before this. But they fired all of us because they said they have no work. Anyway, they were operating partially, two lines through contractors, only on my floor. But they fired all 70-80 of us.” – Woman worker, FGD*

## **II. Disputes Raised are Mostly Individual**

Labour lawyers shared that almost all the cases filed under illegal termination are done under Sec 2(a) of the ID Act for individual workmen. A GAWU representative explains, *“We used to initially file collective disputes. In case 20 workers were laid-off together the dispute would be filed collectively. But then in most cases some workers would lose interest, some would just drop off and not pursue the case. And that became a challenge for us. Now we file them individually. Even if all the workers are ready to file disputes, we file them individually. That way even if workers drop the cases, it only affects the individual and not the rest of the workers.”* They shared that had there been a significant presence of unions within garment factories, or if the dispute resolution was faster, this may not have been the case.

RTI replies from the labour department show that collective disputes filed under Sec 2(k) for the period 2015-2020 were only four of which three were settled in the same year, and another was carried over to the next year and settled in that year.

Unions and labour lawyers have been able to take advantage of the clause allowing for filing for individual termination cases, in providing relief to individual workers. However, even in the absence of a union, during the mediation that took place between the Rangi International workers and the company management, (Case Study 13) it was due to the collective strength that the workers displayed and sustained, that the company had to finally succeed and pay each worker their dues. Had workers struggled on their own through individual raising of disputes, the fight may not have been successful.

*“It is also more expensive for industry level unions or legal representatives to sustain individual cases in place of a collective one. From the union point of view, it is always better to raise a collective demand notice. But at present that is a challenging task.” -Advocate D*

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<sup>35</sup> For more information, please see <https://timesofindia.indiatimes.com/city/gurgaon/asked-to-leave-by-firm-allege-120-muslim-workers/articleshow/75612274.cms>

Of the 9 case studies documenting conflicts related to illegal termination of services:

-in 4 cases, workers tried to talk to the management informally for reinstatement, but were unsuccessful. Only in one (Arjun) out of this 4, the worker had legal support during this phase. However, even after the company promised the worker's LR that it would reinstate him, it did not. And the worker proceeded to file a case in Labour Court.

-in 4 cases, settlement was reached at the conciliation stage at the Labour Department. In 2 cases the workers were reinstated. And in the other two full and final dues were settled.

-among the 5 cases that went for adjudication, only one has concluded in which the award was in favour of the company (Arjun). In one case, after five years of trial, the worker concluded an out-of-court settlement with the company (Sunil). In another, the worker lost the case in Labour Court and is now fighting the case at the High Court (Roopmati). In the third case, the process of adjudication has been going on for four years (Ravi); and in the fourth case, while the Labour Court award was in favour of the worker, its implementation is still pending and the case for recovery of the award is ongoing at the Chief Judicial Magistrate Court (Shadab).

### **III. Conciliation Processes are Mostly Mechanical**

*"There is hardly any change in the attitude of conciliation officers in the last ten years. They were indifferent ten years ago and they are still indifferent to the workers' plight."*-Union Representative, Gurugram

Lawyers and union representatives shared that the process of conciliation tends to be more mechanical than constructive. Sessions are either completed with no active inputs by the CO or are unproductive because employers do not send representatives (Case Study 8). Although Section 11(4) of the ID Act gives the CO power to summon and "enforce attendance of any person" relevant to the industrial dispute, at par with powers vested in a civil court under the Code of Civil Procedure, 1908, this power is hardly used and the conciliation results in failure after a few dates.

*"The system has been carefully built to work against workers. Recently I spoke to a worker whose case is in the court now. He told me how the conciliation failed since the management did not show up for the sessions even after the CO apparently sent them two notices for appearing."* -Ahmed, Saajha Manch

Respondents also shared that in the past, the management would delay conciliation processes endlessly only to tire the worker.

*"The management has nothing to lose. They can keep not appearing for sessions or coming to sessions but not cooperating. And for them this is what they want. That either they keep dragging the conciliation to exhaust the worker or that it goes to the labour court which again is a harrowing process for the worker."*- Advocate C

The amendment made to the ID Act (Sec. 2A (2) amended in 2010) that now allows individual workmen to approach the Labour Court on their own if a settlement cannot be reached within 45 days has been crucial in this regard in the dispute resolution process. Lawyers and union representatives felt that this step has greatly reduced the initial challenge of moving past the seemingly endless loop of conciliation that cases used to be stuck in. However, in a catch-22 situation, an adverse effect of this amendment has also been a greater push for employers to not participate in conciliation sessions and wait out the 45 days before the case reaches the Labour Court knowing fully well that workers will not be able to sustain a court case.

### **IV. Low Conciliation Settlement Rates**

An analysis of the RTI data on dispute numbers and their outcomes also reveal low rates of settlements through conciliation (for the period 2015-2020). Post 2015, there has been a dip in the share of cases settled through conciliation and a rise in the share of cases either reported under Sec 12(4), i.e., failure of conciliation, or those where the worker has directly approached the labour court for adjudication. This reflects the situation on the ground as workers and union representatives have shared that for varying reasons, settlements are rarely achieved during conciliation processes, and workers instead find themselves embroiled in lengthy trials at the Labour Court.

**Table 3: Settlement of Conciliation Cases under 2(a)**

<i>Year</i>	<i>Number of disputes raised under 2(a) for conciliation</i>	<i>% cases settled</i>
2015	186	45
2016	184	31
2017	194	38
2018	177	35
2019	169	22
020	130	23

**V. Companies Settle Quicker when Asked to Pay Rather than Reinstating Worker**

*“The management can be difficult if they want to. And in many cases when it comes to individual workers, they genuinely pose problems during conciliation talks because in most cases the worker is dismissed and wants to be taken back with full back wages. The management will mostly want to just pay off the worker and not take them back.” - CO, Gurugram*

Workers and union representatives shared that it is easier to get companies to settle during conciliation when the demands are only monetary and not of reinstatement. This is a common road block in conciliation during Sec 2(a) disputes and is not a recent trend. *“This issue especially crops up in cases of workers who have been employed in the company for over 4-5 years. Those who have worked for a shorter duration generally prefer to take the money and end the case. But in the former cases, workers press for reinstatement and that is where the case gets stuck”*, shared Advocate D. Especially in cases where workers are represented by union this hesitance of the employer to take back the worker is compounded.

*“They [the management] are scared that the worker will go back to work and start unionising in the factory.” – Union Representative, GAWU*

Often even if a worker is reinstated, they are likely to be transferred to a different unit or department, or issued a new joining date to break seniority, as a punishment, prompting the worker to resign. Sukhbir’s case (Case Study 7) is an example of such instances where workers who are reinstated are harassed after re-joining work.

*“We have heard of workers being victimised after they are reinstated. And now we are taking concrete steps to ensure that our workers do not face such issues and even if they do, we try and resolve them as soon as they arise.”-Lawyer working with GAWU*

A GAWU representative shared that victimisation is more frequent when companies feel that workers may influence other workers and build a union in the factory. Thus, workers who have sought support from GAWU may be looked at by the management as ‘trouble-makers’.

Alternatively, workers are also of the opinion that often companies hesitate to reinstate workers because it also portrays management in poor light in front of other workers, thus supervisors and line in-charges prefer to not have the worker back in their department as it amounts to loss of face, prestige and power. In cases of contract workers COs shared that they found it tough to bring the parties to a settlement. Contractors may be willing to employ the worker in a different company but the worker is generally insistent on going back to the previous company.

It is important to note that in cases that run the risk of dragging on, lawyers and unions advise workers to settle with management for an adequate monetary compensation. However, in cases involving reinstatement demands for a group of workers, the strategy according to a GAWU office bearer, is to press for reinstatement as it is easier to create pressure on companies. An example is the recent successful protest for reinstatement of the workers fired in Chelsea Mills. The collective struggle of the workers and the support built within the group contributed immensely to their victory.

#### **VI. Conciliation Settlements are Often Unfair on Workers**

Labour lawyers and activists were of the view that in cases of individual disputes, workers are more often than not forced to settle on unfair terms only to avoid the long drawn judicial process (where also they stand to lose). It is in fact a win-win for the company management in either scenario.

As mentioned above, companies employ delaying tactics to exhaust workers into either withdrawing the case or agreeing to settle on unfair terms just to end the ordeal.

*“Full and final settlements are rarely actually ‘full and final’. In a typical case, a terminated worker who has been working for about 2-3 years in a company will have compensation due from minimum wages, bonus, overtime payment as well as leaves, and retrenchment compensation etc. But the agreement is generally only on the last drawn salary or much less than what is actually due considering all the violations that a worker may have been subjected to.”-Advocate B*

Sanjay (Case Study 4) had settled for an amount that to him seemed fair considering that he had already spent a year and a half on the case. The final amount however did not include the statutory double rate for overtime that he was legally owed as well as compensation for other violations such as delayed payments, lack of legally mandated leaves etc.

Additionally, the practice of breaking continuity of service and re-hiring on new ID cards ensures that lawyers find it challenging to calculate and advocate for compensation amounts for the actual period of service in the company. In both Sukhbir and Riaz’s cases (case study 7 and 6) the date of joining given on the demand notices are not their actual dates since they had been working in the company for far longer but had been issued new joining dates several times. The conciliation agreement therefore did not include compensation for the previous years that the worker had been employed for and so could not make claims for illegal deductions or wage theft.

Even in collective struggles, such as the recent one in Rangi International (Case Study 13) workers settled for amounts that only considered their unpaid wages and compensation for lay-offs. Other multiple violations including overtime payment were not taken into consideration.

It requires further investigation to understand if the workers are unable to provide documentation that can be used to calculate the entire amount due, or if the lawyers and unions are not strategizing

and fighting the legal battles to push for full compensation. It might be a combination of the two, and that workers want to cut their losses and not invest in lengthy court battles, so they settle for an adequate compensation.

#### **VII. Settlement Terms Incomplete/with Loopholes**

In Riaz's dispute (Case Study 6) the final agreement signed during conciliation does not include the important clause on retaining seniority. During Riaz's conciliation, it was mutually agreed that he would be reinstated with no break in seniority. However, the settlement that was signed did not include the clause on retaining seniority. The team was unable to contact the lawyer representing Riaz for further clarity in the dispute and the settlement. And Riaz too was unaware of the exact terms that were included in it. Thus, it is difficult to delve deeper into the issue. However, it is important to underscore that the absence of this clause may have had an impact on his attempts to subsequently address the issue of being issued a new ID card upon reinstatement.

#### **VIII. Adjudication can Drag for Years**

Adjudication processes can drag on for several years, at the expense of a worker's resources of time and money. Between the first filing of a dispute and the final award after adjudication, cases can go on for more than ten years. In the case studies discussed, of the five disputes of individual termination of employment that went for adjudication, all but one went on for more than four years. One case (Shadab, Case Study 8) continues to drag on even now, for close to a decade.

Specifically commenting on Shadab's case, the lawyer who had initiated the dispute shared that the court gave dates that were often 6-8 months apart. And therefore, a case that could have ordinarily closed in a year, dragged on for 10 years. It is the worker who bears the brunt of the delays, even when it is the Labour Court that delays the proceedings. As a result of the lengthy and tiring process, workers often withdraw their cases or settle outside the court, generally on unfair terms.

*"The cases can drag on for years. The worker may have taken up work elsewhere while fighting this case. If the worker has gone on to work in this new company for say 5 years while fighting the case, while in the previous company he had worked for 2 years, then the worker will not want to go back to that previous company anyway. They will say I'll rather settle. It is more beneficial to them to work in the new company instead of fighting for reinstatement." – Advocate A*

In addition,

*"If the worker asks for compensation of the work days lost, during the case proceedings, the judge will pass an order saying 'no work, no pay'. But they don't stop and think that the worker did not work because the case was still on in the court. And if the worker did take up employment during this time, then the same judge will declare them ineligible for retrenchment compensation and reinstatement. So, what will the worker do? And the judge will give dates that go on for years." – Advocate B*

A senior labour lawyer shared that one way to deal with this situation is for workers to work informally and not enter the formal employment system – a solution that adds to the precarity and insecurity of already vulnerable workers.

#### *Wage Related Complaints*

The second highest number of complaints filed is of wage-related issues under the different Acts pertaining to payment of wages, bonus, gratuity and minimum wages. Labour lawyers shared that among wage related complaints, those under the Payment of Wages Act are the ones filed most often. This was also corroborated by the official data received through RTI applications. Although complaints under the Payment of Wages Act is second on the list, however the difference in number

between these and complaints filed under Sec2 (a) of the ID Act is large (210 complaints under payment of wages versus 1040 total disputes raised under Sec 2(a) of the ID Act between 2015-20).

Wage-theft is now a well-documented form of exploitation in RMG factories. But Ashim Roy shared that this concept was an innovation of GAWU in Gurugram, based on their experience and interaction with the civil society alliance Clean Clothes Campaign and the union federation NTUI, whereby non-implementation of labour laws was conceptualized as theft of workers' property, i.e. wages – a first in the garment industry in India.

All workers interviewed shared multiple instances of violations related to wages that they have faced personally during their work in garment factories. For example, while the law states that workers should be given over-time wages at double the normal hourly rates, in practice, across many factories workers receive double rates only for the first two hours. After that for every hour they receive the single wages. In other factories, the first two hours are unpaid, and single rate is paid for subsequent hours. Thus, the rate of payment of overtime wages varies across factories and workers have not been able to successfully struggle against this system of forced labour.

Non-payment of bonus and gratuity, delayed and non-payment of wages, deductions from salary by contractors, low wages that do not match the skill grade of the worker, low over-time rates mostly in breach of the law and as well as low rates for piece-rate workers, were shared by majority of the workers. The low rate for piece-rate workers was shared as an urgent issue especially post the first Covid-19 lockdown in March 2020. Use of a large pool of contract workers helps employers to keep wages suppressed.

*"Factories are employing more piece-rate workers now after the lockdown. But the rates for each piece have fallen drastically. Earlier if someone was paid Rs. 150 for stitching a full piece of garment, now they get paid about Rs. 70. But workers can't do anything, because they are forced to take whatever they are being paid in the absence of any other employment opportunity."* –Representative of a garment workers' collective in Gurugram

Contractors too contribute to wage theft not only directly by pocketing a cut of the workers' salary but also by paying low daily wage rates while extracting long hours of work. This practice too has increased manifold post the first wave of the pandemic.

*"I get paid at the rate of Rs.250 a day by my contractor and work for up to 12 hours a day now whereas earlier we would get more."*–Woman worker, FGD

The July 2020 notification of minimum wages lists Rs 363/day as the minimum wage for an unskilled worker, for 8 hours of work. This was revised to Rs 373/day in the July 2021 notification. Thus, although this worker falls in the category of semi-skilled or skilled (Rs 381-442 in July 2020), she is getting wages significantly below the minimum wage for an unskilled worker.

Workers' experiences with wages and payment related issues also vary across departments and posts. For example, while tailors in the Sampling Department may be paid wages at least equivalent to the stipulated minimum wages, others such as helpers are often paid less than minimum wages. Even among tailors, rates can differ drastically depending on whether one is employed on a salaried post or on a piece-rate basis.<sup>36</sup>

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<sup>36</sup> The piece-rate system is particularly problematic in the garment industry as the ILO study (Borino 2018) documented. In the US state of California, the *Garment Workers Protection Act* was finally passed in 2021 ensuring hourly wages for workers and closing loopholes piece-rate wages.



*“There is no system of pay-slips in piece-rate work. We do over-time work also because the targets are so high that we have to work extra. But that is never counted. We don’t get joining letters either; salaried workers maybe get joining letters.” -Mahesh, Garment Worker*

In Malati Devi’s case (Case Study 15), the company had kept her in the dark about her actual skill-grade in order to pay her less than the stipulated minimum wages. The lawyer representing her shared that this is a common practice in many companies. Workers are not informed about their skill grade when joining the company and are also kept in the dark throughout their employment. In case a worker is promoted and the promotion causes an upgrade in the skill level of the worker (as per the relevant minimum wages’ grades notification), the company rarely reflects the changes in the workers’ salary. They only provide a nominal increase in the salary which is always much less than the actual stipulated minimum wage for the relevant category.

In fact, non-payment of minimum wages has been a long-standing issue in garment factories in Gurugram. Case Study 16 narrates GAWU’s persistent efforts to force the labour department to recognise this issue and ensure workers are paid their rightful dues.

#### ***I. Numbers of Claims filed are Low***

Although wage-theft continues to be a key issue plaguing the sector, the number of complaints raised with the labour department does not reflect this reality. As per RTI data, in the period 2015-2020, the total number of complaints raised related to wages is roughly 231. The share of complaints under the Payment of Wages is highest (210), followed by gratuity claims (29). No bonus claims have been made in the period 2015-2020 while only two claims of minimum wages were made. The numbers are significantly lower compared to the actual instances of wage violations in garment manufacturing factories.

The absence of bonus claims and the rare cases of minimum wages complaints can be seen in light of the information collected from KIIs that workers hesitate to raise complaints while they are still employed. Thus, there have been no separate claims for bonus payment by workers since these would be raised while the worker is still employed. Additionally, as workers rarely choose to address grievances through state-regulated mechanisms while employed, labour lawyers shared that in the majority of cases, wage violations are addressed through demand notices dealing with illegal termination cases.

#### ***II. Low Settlement Rates of Payment of Wages Complaints***

As per RTI data the rates of settlement in complaints filed under the payment of Wages Act are very low. Only 23 cases out of a total of 210 (11%) have been settled while the larger share of complaints have been disposed (65%). This study did not delve into details related to the reasons behind the low numbers.

According to a GAWU legal representative, in many instances wage claims are an addition to the demand notice filed by an individual workman. This is done to create a pressure on companies to arrive at a settlement with the worker. Once a settlement is reached on the demand notice, the wages complaint is either withdrawn by the complainant or is disposed of by the department.

#### ***Complaints Related to ESI and PF***

*“No company has told me what ESI or PF is. In one of the companies, I had worked in, some workers told me that there is something called PF which is deducted from my salary and also the company deposits some amount and that I should claim it after I leave. That is how I found out about PF.” Prerna, Garment Worker*

Another source of contention between workers and employers are the social security benefits of health insurance (Employees' State Insurance) and retirement benefits (Provident Fund). Workers' experience with ESI and PF claims highlight bureaucratic challenges that trap workers in an endless maze. They complain of PF money being deducted but not deposited by employers, being unable to withdraw PF money after leaving a company because of paperwork issues, being unable to access ESI provisions especially in cases of maternity benefits claims, being unable to join a new workplace because of PF data mismatch etc. In all cases of PF and ESI issues, workers shared that their employers are unsupportive and unwilling to help them resolve issues. In most cases workers struggle to understand and navigate the PF and ESI offices and processes.

Often PF issues can stem from the practice of laying workers off for a day to break their continuity of service (For example, case study 18). Since they are made to join as a new employee, their PF accounts are also made anew. Thus, the same worker can have multiple PF accounts often leading to confusion and challenges in withdrawing the deposited money later when required. In one of the case studies, (Case Study 19), to harass the worker, the company had refused to sign on his resignation papers and thereby stalling his effort to transfer the PF account to his new place of employment.

#### **I. Data Mismatch**

PF related issues have been highlighted, especially after the pandemic since many workers have lost their jobs and are either looking to withdraw money from their PF accounts or seeking fresh employment. In doing so the workers shared that they face problems due to incorrect data entered by company staff. In fact, incorrectly entered data resulting in data mismatch between a worker's PF account data and their identity cards, such as Aadhar, has emerged as a key finding during the field work. The error goes unnoticed while the worker remains employed in the company since the worker rarely chooses to withdraw the money deposited in their PF account. However, on quitting or being fired they face issues since they are unable to access their PF account due to the data mismatch. The previous company offers no support to the worker in resolving the issue, and hence the worker is often left to understand the processes towards resolution on their own by visiting and speaking to PF office staff.

*"I lost my work a year back. So I've been searching for work. I did find work in a new factory. But after working for fifteen days, they fired me. They said my PF money cannot be deposited because in my PF account the name entered is Savitri Devi, whereas in my Aadhaar card, the name is Only Savitri. I got my name changed in the Aadhaar card and tried to withdraw my PF money after that but again they said I can't. Then they told me that the company had entered a wrong birth year, this wasn't matching with my Aadhaar birth year. So now that has to be changed." -Woman Worker, FGD*

In an FGD with women workers from Kapasheda, two workers shared the issues they had faced because of PF data mismatch. Both workers had lost their jobs in the pandemic and found it challenging to find employment elsewhere since companies were unwilling to hire them as their Aadhaar data (in one case the birth date and in another the spelling of their name) did not match with the data linked to their PF accounts. At the time of the FGD while one worker had settled into a fabrication unit (informal employment with no benefits, social security or otherwise), the other was still searching for employment.

Data mismatch issues are also common in ESI accounts of workers and can often result in cancellation of claims. During an interview with an ESI Regional Officer they mentioned that many claims under maternity benefits are rejected on the grounds that the claim was made by a male

worker and is hence ineligible. The flawed rejection is on account of the incorrect entry made by employers where women workers are entered as male in the system.

*Data mismatch is very common. While entering workers' data most company staff are negligent and make frequent errors such as entering the wrong birthdate, not caring to check whether the name they have entered is correct, entering the wrong gender, there are many errors. Now while working in the company, these things won't matter, but obviously if there's a conflict, as in someone wants to claim benefits or has left the job/been fired and needs to join elsewhere. Then issues arise because of this callousness. - ESIC Official, Gurugram Office*

#### *Attack on Unionisation and Unfair Labour Practices*

As per official records, there are no registered unions in the Gurugram RMG industry<sup>37</sup>, however interviews and case studies highlight the presence of unions and their ongoing struggle for registration.

In the past decade GAWU has organised workers in several factories including Magsons, Modelama and in units of the Richa Group of companies, apart from trying to register GAWU as a general union. By 2012 after supporting Modelama workers in successfully obtaining their bonus payments, GAWU had established a strong union with about 200 members. Similarly, they had organised workers in Magsons and more recently in various units of Gaurav International, Richa Global and Richa & Company (all three companies were under the same ownership) to form the Richa Garment Workers' Union. Organising efforts in garment factories in Gurugram can be daunting with a higher degree of investment required due to the multiple, fragmented employment types within factories as well as the obvious pushback from employers against any union activities.

In Gurugram, this issue is further compounded by the challenges faced by unions in getting registered. The fact that in an industry that is at least three decades old in Gurugram, there is no registered trade union is telling of the state of industrial relations. GAWU's endeavours of getting unions registered have been met with resistance by both the industry and the state.

Workers and union representatives shared that at the factory level as soon as the management gets a whiff of any unionising efforts, intimidation and victimisation of workers and union leaders, and union-busting activities are launched with ferocity and unfair labour practices (ULPs as defined in the Fifth Schedule of the ID Act/Third Schedule of the IR Code 2020) are unleashed. These include charging them with untrue or trumped-up allegations, implicating a workman in a criminal case on false or concocted evidence, threatening workmen with discharge or dismissal if they join a trade union, discriminating against workmen either by denying promotion or monetary benefits, transferring workmen mala fide from one place to another under the guise of management policy or prerogative, indulging in acts of force and violence. This has a chilling effect on other workers and dissuades them from joining the union.

*Around 2013-2014, the company had fired many workers on different pretexts including unavailability of work. However, everyone knew that they were fired because they had started unionising and organising and were taking up issues like non-payment of overtime money with the management. But these workers also had union support and did not back down and started protesting in front of the company. During these protests the company did not let us go out of the compound. They just did not want us to see what was happening. During our tea breaks, the company would give us tea and biscuits and did not allow us to go out. This was how they stopped us from speaking to the protestors. But we had an idea of*

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<sup>37</sup> Data from RTI application; Annexure VIII B

*what was happening. Among ourselves we would talk about how the protests were good for us and that maybe we would finally get our overtime dues through this process. - Riaz, Garment Worker*

Case studies in this report also highlight unfair labour practices followed by management. For example, in Magsons, (Case Study 5) Arjun and his co-worker were both fired because of their association with GAWU and the latter's organising activities in the factory. They were threatened and intimidated in a closed room within the factory premises after work hours and forced to sign on blank sheets of paper. Similarly, union members and office bearers of the Modelama Workers' Union faced backlash and were either fired or transferred to different units of the company in order to break the union. Union members and office bearers are also often threatened physically and in an extreme case, an office bearer in Viva Global (Case Study 12) was kidnapped by management goons for his involvement in a unionisation struggle of the factory workers.

*"Management at times does not even wait for workers to form a union. They fire workers who may be showing the potential for standing up for their rights. The message is clear, do not speak up, just go on doing the work and taking whatever money is given to you at the end of the day." -Advocate A*

Even in cases where the union may manage to organise and remain afloat, legal recognition through registration appears challenging. The following points have been summarised from the three case studies on union registration documented in the report.

**Delay in communication with union post application:** The Registrar's office significantly delayed communication of rejection of application in all three cases, much beyond the four months provision in the Haryana Labour Policy, 2006. The reasons given for the rejection were flimsy and included errors in the application that could have been easily rectified by the unions had they been asked and allowed to do so. GAWU was kept waiting for over 6 months after they had applied for registration. The DLC who was to conduct the inquiry went incommunicado. Even the Registrar's repeated memos asking for the matter to be looked into were ignored.

**Unions not given a chance to change errors/clarify doubts in violation of Section 7 of the TU Act, 1926:**

In all three cases, the rejection from the Registrar's office was primarily

**Trade Union Act, 1926 Sec 7(1):** The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under

based on missing information, errors in providing details, even typing errors, all of which could have been rectified by the unions. However, in all three cases the unions were not given a chance to submit clarifications and/or rectify the errors made in the application. As per Section 7 of the Trade Union Act, 1926, the Registrar can ask the unions to submit additional details as required and they unions are to be given an opportunity to provide additional/missing information and correct any errors made during submission. According to senior trade unionist Ashim Roy, "The Trade Union Act is a promotional Act/legislation, and the labour department is not supposed to use technicalities to deny union formation."

**Firing of workers who are union members and the state using this as an excuse to deny registration:** In the case of Modelama Workers' Union, the company which had been informed by the labour department of the application for union registration had started either firing or transferring workers to different units within two months of submission of the application. Instead of recognising this as unfair labour practice, the Registrar of Trade Unions gave this as a reason for rejection of the union registration application, arguing that the membership of the union did not

satisfy the required numbers as mandated under Section 4 of the Trade Union Act. This is a misreading of the law, as Ashim Roy explained that termination of a worker's services (especially if done as a colourable exercise of employer's rights which is unfair labour practice) does not mean that the workman is no longer a member of the factory/industry and union.

The Haryana labour department in its RTI reply has denied that there were any applications made for registration by unions in the Gurugram RMG sector between 2010-2020. However, the three cases documented in this study are all of unions that applied for registration in this time period. Of the three, GAWU filed an appeal against the rejection order and the case is ongoing at the industrial tribunal in Gurugram; MWU engaged in several strategies to fight against the aggressive retaliation faced by the union members, including involving brand CSRs; and the Richa Garment Workers' Union is currently strategising on the next steps after receiving the rejection letter from the Registrar's office in 2020.

#### *Intervention of Police Machinery in Matters related to Industrial Relations*

*Industry and Administration, you cannot look at one in isolation of the other. Where the factory owner can't deal with an issue on their own, they will call the police to deal with it. It is a way to divert the efforts of workers. When an FIR is lodged against 10 of the union workers everyone will have to forget the demand notice and focus their efforts on getting the workers released."* -Advocate A

In the past decade, many spontaneous worker led protests in the garment industry have been thwarted by the use of police.<sup>38</sup> Sehgal (2015) had noted the trend of transforming industrial disputes into law and order criminal complaints, writing that 'we see a pattern where violence is deliberately provoked by management on trivial issues and industrial disputes are converted into law-and-order problems for which police intervention is requested and given with alacrity by district administrations.'

Case Study 25 is one such instance. There is an ongoing criminal case against workers of Gaurav International who had protested in 2015 against the rumoured death of a co-worker, Sammi Chand, due to physical harassment by management representatives. The team interviewed two of the accused workers in the case, of which Jaideep had spent close to four months in jail before he was given bail.

Workers generally feel that the police favours company management over workers, files cases against workers more easily on management request than vice-versa. In fact, the labour representative of the worker Manoj in Case Study 24, shared that they had to make repeated requests to the police officials just to get an FIR registered. Manoj's lawyer also shared that the investigating office had threatened Manoj to withdraw his complaint against the company.

*"They (the police) wanted to settle things and kept trying to get Manoj to agree to the terms offered by the company management. They were not interested in listening to us."* -Manoj's Legal Representative

It was only after they sent a complaint to the NHRC outlining the events and the reluctance of the police to lodge an FIR that things moved a little but there is no resolution till date.

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<sup>38</sup> See the following newsreports:

- <https://indianexpress.com/article/cities/delhi/gurgaon-rioting-attempt-to-murder-case-against-factory-workers/>;
- <https://indianexpress.com/article/cities/delhi/rioting-by-garment-factory-workers-in-gurgaon/>;
- <https://timesofindia.indiatimes.com/city/gurgaon/Garment-workers-run-riot-after-colleagues-death-10-cops-hurt/articleshow/32874689.cms>;
- <https://libcom.org/library/death-worker-work-kills-modelama-textile-factory>;

### *Specific Issues Emerging During the Pandemic and Ensuing Lockdown*

The plight of migrant workers during the first lockdown has been well documented in the media as well as in academia and by civil society groups. Gurugram witnessed thousands of migrant workers stranded, starving, broken, trying to reach home to their families.<sup>39</sup>

The garment sector faced a crisis as orders were cancelled in bulk with no timeline in sight of when orders and production will resume.<sup>40</sup> The financial precarity faced by garment manufacturers, impacted workers more harshly as even after the lockdown was lifted many workers found themselves without jobs. Companies refused to take back all workers as most places were only functioning at half capacity. Many workers who had gone back to their villages were also scared of returning to Gurugram fearing another lockdown. Most workers did not receive their full wages as per the government orders that asked companies to pay workers their wages all through the period of lockdown.

*“I had worked till 20<sup>th</sup> March. The company only paid me for the twenty days of March. After that they did not give me any money, nor did they take me back to work.” -Kamal, Garment Worker*

Labour department officials while remarking that they hardly receive complaints from the garment industry, however admitted that in the aftermath of the pandemic, several workers did approach them with issues of termination. When analysing the “2(a) complaints register” of the one Circle of the Gurugram labour department that the team was allowed to look at, it was apparent that unlike 2019 where the workers were from different companies, in 2020 there were groups of workers that had raised disputes against the same company. Although workers have been severely affected by the repercussions of the pandemic, compounding their existing vulnerabilities, the response of the industrial relations machinery has been excruciatingly slow.

### *Gender Discrimination and Workplace Sexual Harassment*

Among women workers perhaps the more acutely felt reasons for dissatisfaction at the workplace is that of harassment and discrimination. All women workers interviewed individually and through group discussions shared instances of discrimination and harassment that they had either experienced or had witnessed on the shop floor. Sexual harassment in many cases can turn into sustained victimisation of the woman worker. Especially in cases where the worker refuses advances made by the perpetrator. Often women have been fired after raising their voices against harassment.

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<sup>39</sup> See newsreports:

- <https://www.indiatvnews.com/news/india/haryana-lockdown-4-migrants-gurgaon-walk-to-railways-station-to-return-home-618605>;
- <https://www.hindustantimes.com/cities/gurugram-news/caught-in-lockdown-thousands-of-workers-in-gurugram-have-nowhere-to-go-101621078504052.html>;
- <https://thewire.in/rights/lockdown-migrant-workers-savings-loans-gurugram-survey>;
- <https://www.firstpost.com/india/a-year-into-lockdown-migrant-labourers-in-gurgaon-continue-to-struggle-without-work-9471691.html>;
- <https://www.india.com/news/india/haryana-lockdown-news-today-12-january-2022-fearing-job-loss-full-lockdown-migrant-workers-in-gurgaon-head-home-omicron-night-curfew-ambala-sirsa-yamunanagar-5183477/>

<sup>40</sup> See

- [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_758428/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_758428/lang--en/index.htm);
- [https://www.ilo.org/africa/technical-cooperation/inclusive-industrialization/WCMS\\_741522/lang--en/index.htm](https://www.ilo.org/africa/technical-cooperation/inclusive-industrialization/WCMS_741522/lang--en/index.htm);
- [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/briefingnote/wcms\\_758626.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/briefingnote/wcms_758626.pdf);

*We face multiple issues at work. If I want to rest for five minutes and drink water then I'll be screamed at, if I make 30 pieces in the first hour and then 28 in the next, I'll be screamed at. We are told to go to the bathroom only during lunchtime and not during work hours. I can't receive emergency calls even from home. If I receive the phone then I have to hear bad abuses hurled at me, or they'll taunt and say, Madam switch off your phone or go home and talk as much as you want. -Woman worker, FGD Kapasheda*

*They set impossible targets, like completing 60 pieces in an hour. And in those pieces if even one thread is out of place, then they throw the piece on our faces. – Woman worker, Thread Cutter (FGD, Kapasheda)*

### **I. Women Workers Rarely Raise Complaints against Harassment in the Factory**

Apart from a few rare incidents where the targeted woman worker complains, most women shared that these instances of harassment go unreported.

*We talk amongst ourselves, share it with each other. Sometimes we don't do that also. But no one will complain to the management about this. This is a normal thing that happens in factories. -FGD Participant*

They also shared that in most cases workers either ignore or leave the workplace in case of repeated accounts of harassment. Complaints within the workplace or externally (to the Local Committee as per the POSH Act, 2013) are rare. The research team tried to find workers who had taken up a complaint either within the workplace or to any authority (police, local committee) but were unsuccessful. The report therefore does not include a specific case study that deals with workplace sexual harassment.

*Sexual harassment is common practice. Supervisors, master tailors, line in-charge, target pretty workers and tell them that if they listen then they will not be given too much work and they will be taken care of. Some women get forced into this trap and they stay on in the factory, others who do not agree are fired.- Roopmati, Garment Worker*

### **II. Sexual Harassment cannot be Addressed through the State Regulated Processes of Dispute Resolution**

Survivors of sexual harassment in the factory can file complaints with the Internal Committees (IC) as the grievance redressal mechanism under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (commonly called POSH). Sexual harassment is also categorised as misconduct by a workman under Rule 14(3)(I) of the Industrial Employment (Standing Orders) Central Rules, 1946 whereby a workman can be fined up to 2% of his wages in a month or can be placed under suspension while disciplinary or criminal proceedings are underway.

In reality, most factories do not have a functioning IC or grievance redressal mechanism (under Section 9C of the ID Act). Even if these mechanisms are in place, workers report being too scared to report for fear of not being believed, fear of victimisation and loss of employment, and because most often the complainant is fired while the perpetrator is not and thus there is a lack of trust in the functioning of the grievance mechanisms. Furthermore, the POSH Act is ambiguous on whether workers in a factory (with more than 10 workers) can approach the district level Local Committee for resolution in case they cannot take it up with the IC for various reasons that include lack of trust as well as companies not having any functional ICs.

The creation of a parallel system to address sexual harassment that falls under the Ministry of Women and Child Development also makes it more complex for workers to address sexual harassment that is often combined with victimisation on the shopfloor, which would fall under industrial disputes administered by the Ministry of Labour and Employment. Women who refuse

advances by their seniors, or confront their perpetrators are often victimised by burdening them with unrealistic targets, frequently transferring them between different departments and/or terminating them. While the incidents of victimisation will need to be addressed via the ID Act process, that of the original sexual rights violation that led to it need to be addressed through the IC. This creates multiple branches of grievance redressal that the worker needs to follow through in order to claim her rights. As such, this can only lead to further harassment of the worker instead of working in her favour which was the original intent of the laws.

Case Study 9 that documents Roopmati's fight against illegal termination is one such instance. She had to endure repeated accounts of abuse perpetrated by the Master tailor-in-charge and when she did finally complain about him, she was fired within two weeks.

It is important to emphasise here, that the absence of case studies of sexual harassment in this report by no means is an indicator of absence or low incidents of sexual harassment. If at all it only reflects on the continued stigma, lack of support, and difficulty that complainants face in raising complaints and accessing justice.



## V. Conclusion

Experiences and stories of workers as well as the analysis of case documents point towards a flawed and broken system of industrial relations in the Gurugram garment industry. The larger share of workers' grievances remains unaddressed.

The process of dispute resolution as outlined in the ID Act is detailed and involves a step-by-step journey of approaching the issue that relies on systems institutionalized in the workplace as a first resort to resolution, failing which: mediation by the state, failing which: adjudication via Labour Courts and Industrial Tribunals. However, functional Works Committees that are to act as first points of conflict resolution are rarely present in most factories in Gurugram including in many Tier-1 factories. In any case, informal mechanisms of resolving grievances at the factory level are rarely used by workers for several reasons such as fear of dismissal, non-existent systems of grievance redressal, lack of support including legal support, etc. Only in cases where workers are fired, do they access informal means of resolution. And even in these cases it is restricted to individual workers trying to convince the management to keep them back at work. Successful resolutions that are in favour of the worker appear to be possible only if the worker has legal and/or union support, both of which have little presence in the industry.

The state-regulated processes of conciliation and adjudication are challenging for workers. Lengthy processes both during conciliation and adjudication stages, lack of exercise of powers of conciliation officers granted in the ID Act, mechanical rather than substantive process of conciliation, unfair or non-satisfactory settlement terms, lack of implementation of court orders all add to workers' challenges in accessing justice.

More research is required to understand how the pervasive informality of employment in the sector shapes the emergence and articulation of disputes and the resolution of the disputes. If the resolution is informal then at what level is it getting sorted out (subcontractor, contractor, supervisor/manager, owner etc.).

In the absence of factory-level unions, conflicts remain isolated and individual experiences. Individual victories are hard to achieve and hardly have an impact on the industry and therefore do not change the prevailing practices or industrial relations culture of the industry. In the absence of collective bargaining, struggles continue in isolation and benefit workers in piecemeal manner without substantially altering the functioning of the industry in the geographical location.

The presence of a general garment workers union in the area, such as the Garment and Allied Workers Union (GAWU) and the work done by this union, its members, and the legal team in gaining institutional recognition of workers agency and voice, in bringing the RMG sector into the realm of rule of law and a modicum of application of minimum basic rights, also demonstrates the challenges of simultaneously addressing pressures induced by the structural nature of the organisation of production in the industry as well as the local organisation of social relations and labour relations, and historical evolution of industrial relations in the region and in the sector.

In this current environment of industrial relations where workers largely feel unsupported and rarely can secure justice, the impending implementation of the four labour codes will further undermine workers' rights especially those related to trade union rights. Without more institutional support for fostering formal employment relations and healthy industrial relations in the sector, it does not seem possible for the sector to scale the global heights of value addition and exports that industry associations, governments, and employers voice often.

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## VII. Annexures

### Annexure VIII A: Details of Respondents of IDIs and KIIs

**Table I: Key Informant Respondents**

S.No.	Key Informants Interviewed
1	<b>Advocate A:</b> Senior labour lawyer associated with AITUC
2	<b>Advocate B:</b> Labour lawyer with experience of working in Gurugram since mid-2000s
3	<b>Advocate C: Labour lawyer formerly associated with GAWU</b>
4	<b>Advocate D:</b> Labour lawyer working in Gurugram
5	<b>Advocate E:</b> Labour lawyer formerly associated with GAWU
6	Labour lawyer, Gurugram (also a former auto sector worker)
7	<b>Sumit:</b> Garment worker, Gurugram
8	<b>Ahmed:</b> Saajha Manch employee
9	<b>Kanhaiya:</b> Saajha Manch employee
10	ESIC Official in Dundahera branch
11	Deputy Labour Commissioner, Gurugram
12	Assistant Labour Commissioner A, Gurugram
13	Assistant Labour Commissioner B, Gurugram
14	Assistant Labour Commissioner C, Gurugram
15	<b>Ali:</b> Worker at a fabrication unit in Gurugram
16	<b>Hemant:</b> Garment worker, Gurugram
17	GAWU representative and office bearer
18	<b>Ashim Roy:</b> Senior trade unionist
19	<b>Rakhi Sehgal:</b> Labour researcher and Activist

**Table II: Workers Interviewed for Case Studies**

S.No.	Pseudonym	Male/Female	Age	Caste	Local/Migrant	Post (at time of complaint/dispute)
1	Sanjay	Male	46	SC	Migrant	Final Checker
2	Arjun	Male	34	OBC	Migrant	Sticker Man
3	Riaz	Male	40	OBC	Migrant	Helper
4	Sukhbir	Male	42	General	Migrant	Tailor (Production Department)
5	Shadab Ahmed	Male	40		Migrant	Folder (Finishing and Packing Department)
6	Roopmati	Female	47		Local	Tailor (Production Department)
7	Sunil	Male	26	OBC	Migrant	Tailor (Production Department)
8	Ravi	Male		General	Migrant	Supervisor, Processing Department
9	Prerna	Female	28	OBC	Migrant	Tailor (Production Department)
10	Suman	Male		General	Migrant	
11	Vinay	Male			Migrant	Final Checker

12	Abhilasha Devi	Female				
13	Kamal	Male			Migrant	Supervisor
14	Manoj	Male	33	SC	Migrant	Operator in R&D Department
15	Mahesh	Male			Migrant	Tailor
16	Jaideep	Male			Migrant	Tailor
17	Sanjeev	Male			Migrant	Sticker Man

#### Annexure VIII B: Data Received through RTI Applications on the Gurugram RMG Sector

##### i. Trade Unions in Gurugram RMG

Data for 2010-2020 received from IR-I branch of Haryana Labour Department that deals with the Trade Union Act.

Inquiry	Response from IR-I
List of existing trade unions in the Gurugram RMG sector	No
Applications made for registration of trade unions in the Gurugram RMG sector	No applications made
Cancellation of registration of trade unions in the Gurugram RMG sector	No cancellations
Appeals	One appeal by Anannya Bhattacharjee under Section 11 pending before the Gurugram Appellate Court

However, at least two known unions had applied for registration between 2010-2020:

- Modelama Workers' Union in 2012
- Richa-Gaurav workers' union in 2019

##### ii. Unfair Labour Practices under 25T and U

None reported from any circle.

##### iii. Stoppages and Lockout

Response received from the IR branch of Chandigarh lists only one case of stoppage/lockout in Dhir International between 2015-2018. (The data for 2019 and 2020 was not provided)

Year	Stoppage/Lockout	Status	Man-days lost	Number of workers affected
2017	1- Dhir Global	Not concluded	101600	508
2018	1- Dhir Global	Not concluded	155956	508

iv. 2(k) Disputes

Collective disputes were only reported by Circle 2 and 4. All other circles reported “nil” collective disputes between 2015-2020.

Negligible number of collective disputes- 4 total disputes raised (3 were settled in the same year while one was carried over to the next and settled in that year)

Year	Disputes	Settled under 12 (3)/18(3)
2015	2	2
2017	1	(pending that year)
2018	2	2 (one settled from previous year)

v. 2(a) Disputes

Year	Number of disputes raised under 2(a) for conciliation	Number of disputes settled under 12 (3)/18(3)	Number of disputes withdrawn	Number of disputes disposed /filed	Number reported under 12(4)	Cases where workmen approached court directly	Number of pending disputes
2015	186	85	10	0	36	46	9
2016	184	57	11	0	75	42	6
2017	194	75	14	0	15	70	21
2018	177	63	12	0	11	71	25
2019	169	38	27	0	0	103	8
2020	130	30	6	0	9	67	22

vi. Payment of Wages

Year	Number of claims pending from previous year	Number of claims received during the year	Number of claims withdrawn	Number of claims disposed	Number of claims settled	Number of pending claims
2015	8	18	6	11	2	7
2016	7	39	4	32	4	6
2017	6	48	5	20	4	25
2018	25	26	4	24	8	16
2019	16	53	5	35	5	24
2020	24	18	2	15	0	25

Total claims between 2015-2020: 210

Settlement rate very low: 11% (23 of 210)

Maximum cases of payment of wages are disposed: 65% (137 of 210)

Also see [Statistical Abstract of Haryana 2020-21](#), Tables 9.3-9.8, pages 223-228 for –



- district-wise Number of industrial disputes in Haryana;
- Industrial disputes resulting in strikes and lock-outs by causes of disputes in Haryana;
- Trade Unions under the Trade Union Act, 1926 in Haryana;
- Classification of Trade Unions according to membership in Haryana;
- Party/central organisations affiliation of registered Trade Unions in Haryana;
- Workmen's compensation (compensation paid in lieu of accidents under Workmen's Compensation Act,1923) in Haryana.

And Tables 19.1-19.5 , pages 427 –450 for –

- District-wise Number of registered factories and workers employed in Haryana;
- Size and distribution of registered working factories in Haryana;
- Size and distribution of registered working factories in Haryana;
- District-wise and industry-wise number of working factories;
- Estimated No. of workers employed in working factories industry-wise and District-wise;

vii. **Payment of Minimum Wages**

Only two claims. One in 2016 and one in 2017. One of these were withdrawn and the other disposed.

viii. **Payment of Gratuity**

No reply received from Circles 5 and 6.

Summary of Circle 1-4 Data

<i>Year</i>	<i>Number of claims pending from previous year</i>	<i>Number of claims received during the year</i>	<i>Number of claims withdrawn</i>	<i>Number of claims disposed</i>	<i>Number of claims settled</i>	<i>Number of pending claims</i>
2015	2	2	1	2	0	1
2016	1	7	1	3	0	4
2017	4	3	0	3	0	4
2018	4	0	0	2	0	2
2019	2	10	0	1	0	11
2020	11	5	0	4	0	12

- Negligible claims between 2015-2020: 29 in total
- None settled
- Mostly disposed: 15 of 29
- Many pending: 12 of 29 as of 2020

ix. **Payment of Bonus**

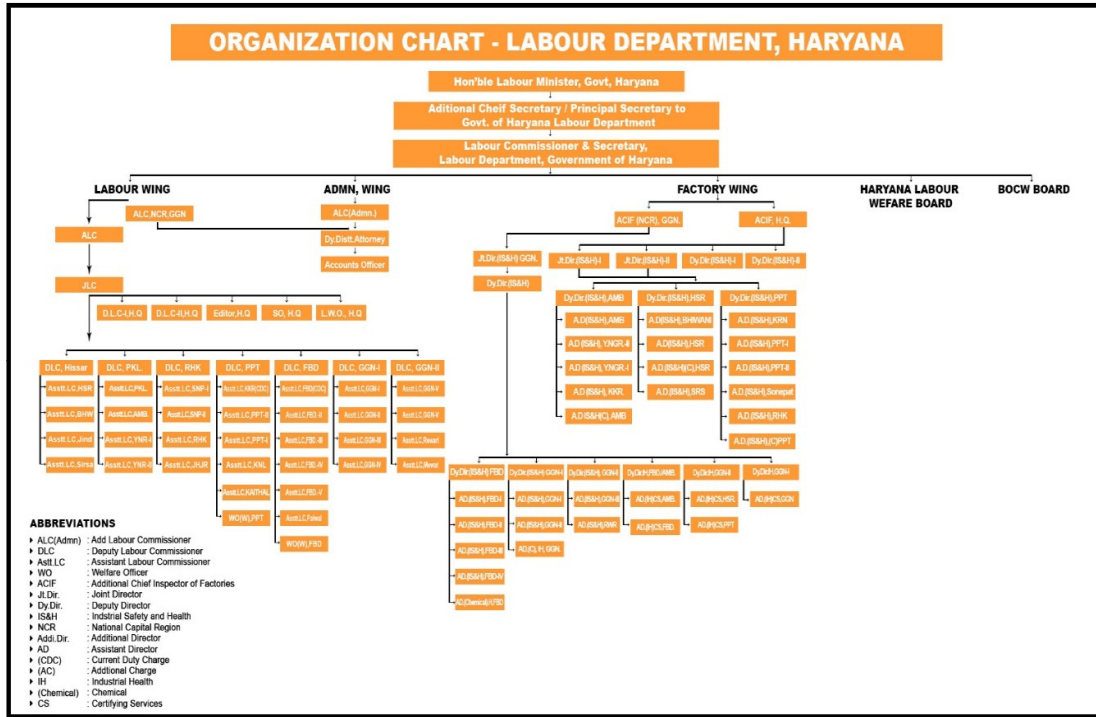
No reply received from Circles 5 and 6

No bonus claims received by Circles 1-4.

Annexure VIII C: Haryana State Labour Department

Layout of the Department-State

The Haryana Labour Department office is in Chandigarh with Deputy Labour Commissioners (DLCs), Labour Wing, posted in Hisar, Panchkula, Rohtak, Panipat, Faridabad and Gurugram. Deputy Directors, Industrial Safety and Health (DISH- Factory Wing) are posted in Faridabad, Gurugram, Hisar, Sonapat, Panipat, and Ambala.



Source: <https://hrylabour.gov.in/staticdocs/organization-chart.jpg>

The implementation of the various laws is divided between two wings in the Labour Department: the Factory Wing and the Labour Wing. The Factory Wing is responsible for the Factories Act, 1948 and the Building and Other Construction Workers (RE & CS) Act, 1996 (including the Building and Other Construction Workers Cess Act, 1998) which would now be covered under the Occupational Safety, Health and Working Conditions Code, 2020. The Labour Wing is responsible for 23 other laws that include the ID Act, the Trade Unions Act, the Payment of Wages Act, and Payment of Gratuity Act and which would now be covered under the 3 Labour Codes (The Code on Wages, 2019; The Industrial Relations Code, 2020; The Code on Social Security, 2020).<sup>41</sup> The roles of various labour officers under the different labour laws are given below.

Sr.No	Name of the Act.	Labour	Joint Labour	Dy.Labour	Labour Officer-cum-
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<sup>41</sup> See state-wise status of labour codes at <https://www.lawrbit.com/article/indias-new-labour-codes/> and Haryana state rules at <https://www.lawrbit.com/wp-content/uploads/2021/09/Haryana-Code-on-Wages-Rules-2021.pdf>; <https://www.lawrbit.com/wp-content/uploads/2021/09/Haryana-The-Industrial-Relations-Rules-2021.pdf>; <https://www.lawrbit.com/wp-content/uploads/2021/09/Haryana-Occupational-Safety-Health-and-Working-Conditions-Rules-2021.pdf>; and <https://www.lawrbit.com/wp-content/uploads/2021/09/Haryana-Code-on-Social-Security-Rules-2021.pdf>.

		Commissioner	Commissioner	Commissioner	Conciliation Officer
1.	Contract Labour Act.	Registering & Licensing Officer	Inspector	Inspector	Inspector
2.	Trade Unions Act.	Registrar	Additional Registrar	-	-
3.	Industrial Disputes Act.	Conciliation Officer	Chief Conciliation Officer	Conciliation Officer	Conciliation Officer
4.	Payment of Wages Act.	Inspector	Inspector	Inspector	Authority/ Inspector
5.	Minimum Wages Act.	Inspector>	Inspector	Inspector	Authority/ Inspector
6.	Inter state Migrant Act.	Registering & Licensing Authority	Inspector	Inspector	Inspector
7.	Maternity Benefit Act.	Inspector	Inspector	Inspector	Inspector
8.	Motor Transport Workers Act.	Chief Inspector	Inspector	Inspector	Inspector
9.	Child Labour Act.	Inspector	Inspector	Inspector	Inspector
10.	Payment of Bonus Act.	>Inspector	Inspector	Inspector	Inspector
11.	Working Journalists Act.	Inspector	Inspector	Inspector	Inspector
12.	Payment of Gratuity Act.	Inspector	Inspector	Appellate Authority/Inspector	Controlling Authority/ Inspector
13.	Equal Remuneration Act.	Appellate Authority	Inspector	Inspector	Authority/ Inspector
14.	Sales Promotion Employees Act.	Inspector	Inspector	Inspector	Inspector
15.	Punjab Shops & Commercial Est's. Act.	Inspector	Inspector	Inspector>	Competent Authority for Sanctioning Prosecutions
16.	Workmen's Compensation Act	-	-	-	Commissioner
17.	Industrial Employment (Standing Orders) Act.	Inspector	Certifying Officer	-	Inspector
18.	National&Festival Holidays Act.	Inspector	Inspector	-	Inspector
19.>	Bonded Labour Act.	-	-	-	>-
20.	Punjab Labour Welfare Fund Act.	Welfare Commissioner	Inspector	Inspector>	Inspector

**FACTORY WING**

Sr.No	Name of the Act.	Labour Commissioner	Addl. Labour Commissioner	Dy. Director (I.S&H)	Sr.Asstt Director (I.S&H)	Asstt. Director (I.S&H)	Medical Officer	Certifying Surgeon
1.	Factories Act.	C.I.F.	A.C.I.F	INSP-ECTOR	INSP-ECTOR	INSPECTOR	INSPECTOR	INSPECTOR

Source: <https://hrylabour.gov.in/content/cms/MTE>

Apart from the implementation of labour laws, the Labour Department as per the Punjab Labour Welfare Fund Act, 1965<sup>42</sup> has established the Haryana Welfare Board that works towards developing welfare schemes for workers<sup>43</sup>. The Board receives monthly contributions from employees (0.2% of remuneration to a limit of Rs. 25) and employers (double of employee contribution) to run the schemes. It also receives accumulated money from employers that were to be otherwise rightfully distributed among employees such as delayed/unpaid wages, gratuity, and bonus money and so on (Labour Department, Haryana 2021). The Board comprises of the DLC Welfare at the Chandigarh Headquarters and Labour Welfare Officers and Labour Inspectors (Welfare) at the field level.

<sup>42</sup> See the Act at

[https://www.indiacode.nic.in/bitstream/123456789/11214/1/punjab\\_labour\\_welfare\\_fund\\_act%2C\\_1965.pdf](https://www.indiacode.nic.in/bitstream/123456789/11214/1/punjab_labour_welfare_fund_act%2C_1965.pdf) and benefits for workers at

<https://cdnbbsr.s3waas.gov.in/s35227b6aaf294f5f027273aebf16015f2/uploads/2021/07/2021071426-1.pdf>

<sup>43</sup> See state wise labour welfare fund details at <https://www.hrcabin.com/labour-welfare-fund-state-wise-in-india/>.

The department is further divided into smaller branches that are responsible for record keeping and handling of work under different Acts. These include<sup>44</sup>:

- IR-I Branch – which deals with the documentation and coordination under the Industrial Disputes Act, 1948 and the Trade Union Act, 1926
- IR-II Branch – which deals with 11 Acts that include the Payment of Wages Act 1936, Payment of Minimum Wages Act, 1948, Payment of Bonus Act 1965, Payment of Gratuity Act, 1972, Contract Labour (R&A) Act 1970, and the Employee’s Compensation Act 1923.
- IR-III Branch - which deals with the Industrial Disputes Act, 1948, Bonded Labour (Abolition) Act, 1976, Child and Adolescent (Prohibition and Regulation) Act, 1986.
- Statistical Branch – which deals with collection and compilation of data from field offices, preparation of reports for internal submissions as well as to the Government of India.

The Haryana Labour Department Haryana implements the following Central and State enactments:

Central Laws	State Laws
<ul style="list-style-type: none"> <li>• Bonded Labour System (Abolition) Act, 1976</li> <li>• Child Labour (Abolition &amp; Regulation) Act,1986</li> <li>• Contract Labour (Regulation and Abolition) Act, 1970</li> <li>• Equal Remuneration Act, 1976</li> <li>• Factories Act,1948</li> <li>• Industrial Disputes Act, 1947</li> <li>• Industrial Employment (Standing Orders) Act, 1946</li> <li>• Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979</li> <li>• Maternity Benefit Act,1961</li> <li>• Maternity Benefit (Mines and Circus) Rules, 1963</li> <li>• Minimum Wages Act, 1948</li> <li>• Motor Transport Workers Act, 1961</li> <li>• Payment of Bonus Act,1965</li> <li>• Payment of Gratuity Act, 1972</li> <li>• Payment of Wages Act, 1936</li> <li>• Sales Promotion Employees (Conditions of Service) Act,1976</li> <li>• The Building and Other Construction Workers Welfare Cess Act, 1996</li> <li>• The Building and Other Construction Workers Welfare (RE &amp; CS) Act, 1996</li> <li>• The Employees State Insurance Act, 1948</li> <li>• Trade Unions Act, 1926</li> <li>• Workmen's Compensation Act,1923</li> <li>• Working Journalists and other Newspaper Employees and Miscellaneous Provisions (Condition of Service) Act, 1955</li> </ul>	<ul style="list-style-type: none"> <li>• Punjab Industrial Establishments (National and Festival Holidays and Casual and Sick Leave) Act, 1965</li> <li>• Punjab Labour Welfare Fund Act, 1965</li> <li>• Punjab Shops and Commercial Establishments Act,1958</li> <li>• Haryana Major Accident Hazard Control Rules,2009</li> </ul>

(Source: [hrylabour.gov.in](http://hrylabour.gov.in))

### Gurugram Labour Department

The Department structure in Gurugram is similar to the overall Haryana Labour Department. It is further divided into regions-Gurugram I and II. The factory and labour wings are under two DLCs and two Deputy Directors (Industrial Safety and Health) respectively.

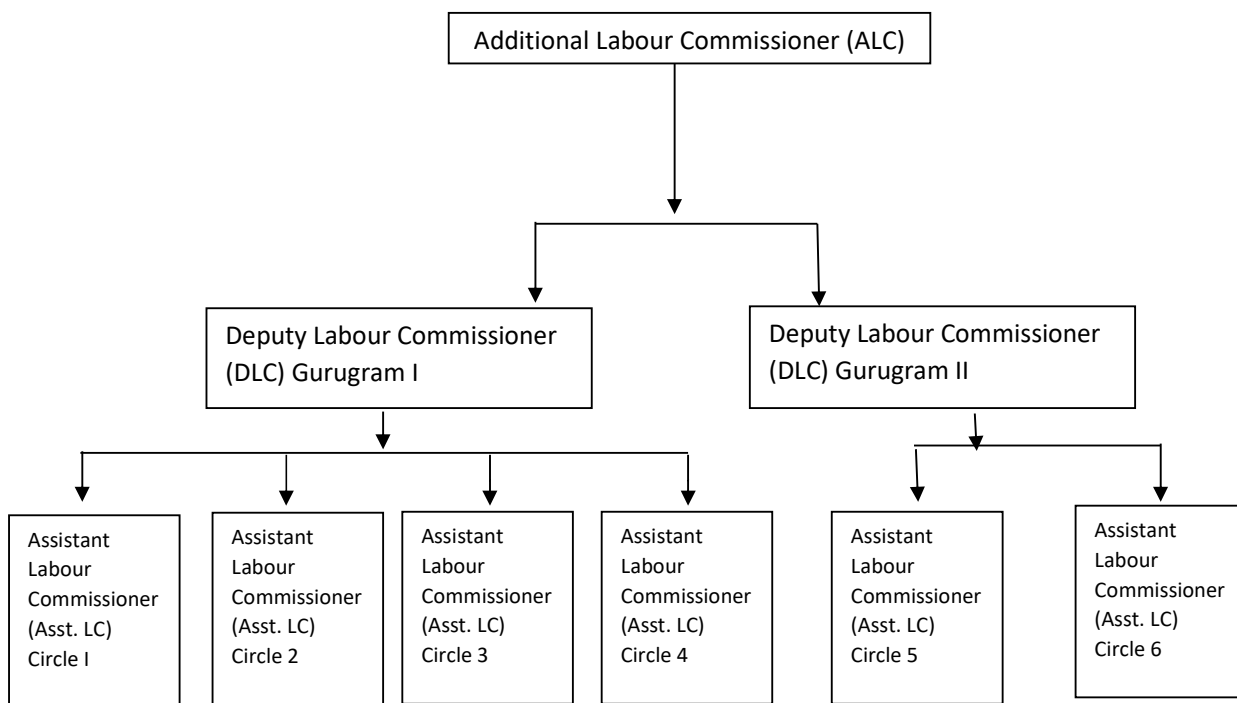
<sup>44</sup> For more information see: [https://hrylabour.gov.in/content/citizen\\_charter](https://hrylabour.gov.in/content/citizen_charter)

Gurugram also has two Labour Courts-cum-Industrial Tribunals functioning under the Presiding Officers (PO)<sup>45</sup>. Section 11 of the ID Act lays out the 'Procedure, Powers and Duties of Authorities' such as the conciliation officers, Boards, Courts and Tribunals. Section 11A lays out the 'Powers of Labour Courts, Tribunals, and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.'<sup>46</sup> Generally matters listed in the Second Schedule of the ID Act come under the jurisdiction of Labour Courts, while matters listed in the Third Schedule of the ID Act come under the jurisdiction of Industrial Tribunals.

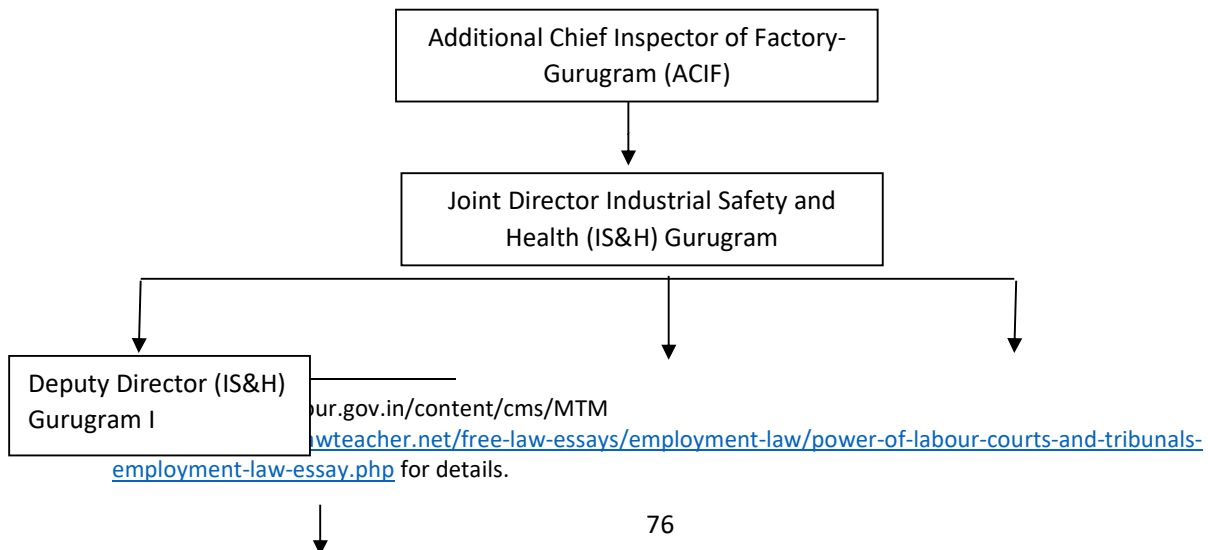
The diagrams below outline the setup of each section of the Gurugram labour department.

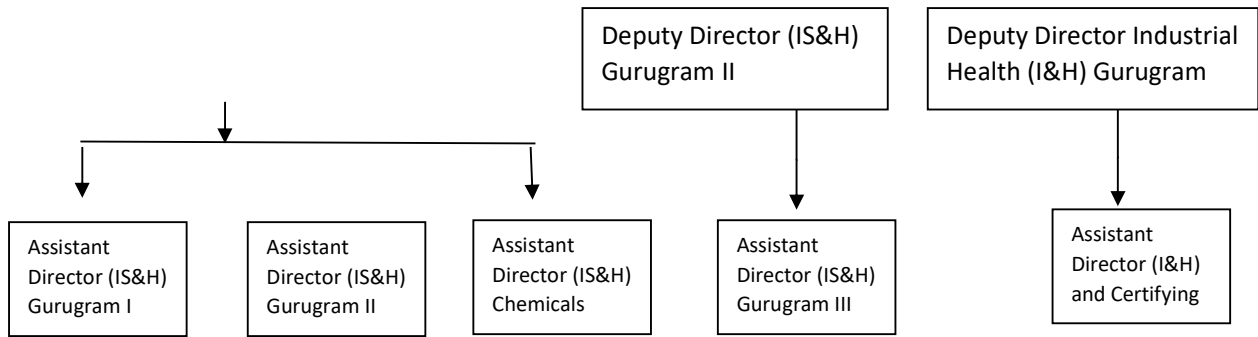
*Labour Wing Setup in Gurugram:*

Under the two DLCs, Gurugram is further divided into 6 circles, each under an Assistant Labour Commissioner who also acts as the Conciliation Officer for disputes falling within their area of jurisdiction.

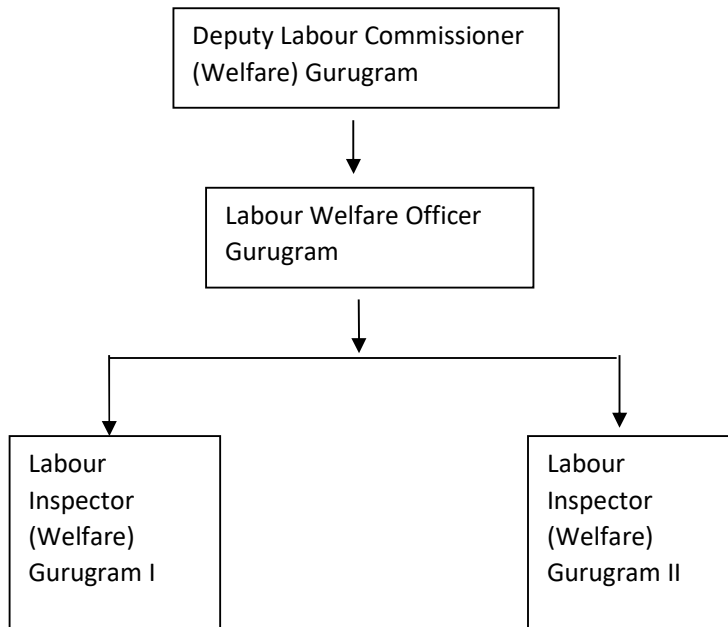


*Factory Wing Setup in Gurugram:*





*Labour Welfare Board (Gurugram):*



## Recent Labour Law/Policy Changes in Haryana Impacting Industrial Relations

This section details some of the changes that have been administered by the Haryana Government and the implications on labour relations in Haryana. The section has been divided into two parts. The first part discusses key amendments made to existing labour laws in the state that further reduced employer liability towards the employed workers. The second part details the changes made in policies and schemes in the past few years. Both - changes made at a policy level as well as the direct amendments made to labour laws - have decreased employer accountability.

### Amendments to Labour Laws

In 2014 the Haryana government was planning to bring changes to the existing labour laws, especially the ID Act, the Factories Act and the Contract Labour Act, following the Rajasthan State Government's modifications to labour laws with the stated objective of attracting investment. Special emphasis was also laid on the labour-intensive manufacturing sector where the existing laws were cited as impeding the expansion of investment (Nanda 2014).

By 2018 the Haryana state government had already changed 18 laws to "*resolve irritants dogging the industry*", as per the then state labour minister (SNS 2018). These included amendments to sections of several acts that dealt directly with industrial relations guaranteeing a workman with specific legal rights. These changes are now mostly part of the Labour Codes. The section below summarises a few of the changes brought in by the Haryana government that have impacted labour relations within the state.

- Employment of "fixed-term" workers by factories (Notification dated 27.05.2019<sup>47</sup>)

(Provision of fixed term employment is now included in the Industrial Relations Code 2020)

Fixed-term employment is defined as "*an employment in which a workman has been engaged on the basis of a written contract of employment for a fixed period.*" This necessitates a written contract of employment. The employee is also guaranteed: hours of work, wages, allowances and other benefits not less than that of a permanent workman; and that they will be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by even when the period of employment does not extend to the qualifying period of employment required in the statute. It also guarantees the status as a workman which gives them the right to raise an industrial dispute<sup>48</sup>.

However, it disadvantages the worker's income security as not only does it provide the industry the power to define varied temporary employment relations, but also provides the fixed-term employee with no mechanism to safeguard their employment. According to the amendment, in such contracts, the employer is not liable to provide any notice of termination (for all such workers, including monthly rated, weekly rated, or piece rated, and probationers or *badli* workmen<sup>49</sup>). In case the worker is not re-hired after the contract lapses, the employer is not obligated to provide a notice period or pay.

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<sup>47</sup> See: [https://storage.hrylabour.gov.in/uploads/labour\\_laws/Y2019/Nov/W1/D04/1572847955.PDF](https://storage.hrylabour.gov.in/uploads/labour_laws/Y2019/Nov/W1/D04/1572847955.PDF)

<sup>48</sup> A few contracts of workers that GSK organisers have seen were not on letterheads of either the principal employer or the contractor but on plain paper, without signatures or company stamps. The workers thought they had security of employment because they had a piece of paper but in fact it would not have any legal standing as an official employment document.

<sup>49</sup> Categories of workmen are provided under the Model Standing Orders given in the Industrial Employment (Standing Orders) Rules. According to which a 'Badli' workman is a workman who has been appointed in the post of permanent workman or a probationer, who is temporarily absent.

This legitimises the ongoing practice within the garment industry of hiring workers for short periods during high seasons of productivity and terminating their services as soon as the targets are complete. Often, the industry as well as the labour department has in the past justified this practice as beneficial to both worker and industry, citing seasonal migrants and their need for short duration work in destination areas after which they return to their villages. The other commonly cited justification is the mobility given to such workers to move among factories, the assumption being that this mobility advantages the worker by providing them with best opportunities and way-outs wherever required (Sehgal 2018). Such reasoning does not account for the reality of the workers situation such as lack of protection and inability to address violation of their rights. In addition, for the last few years workers have been reporting that it has become increasingly difficult to find jobs, so the exiting-as-resistance strategy or for flexibility, is not really an option any longer for the workers.

- Increasing required limit of workers for registration of contractor under the Contract Labour Act

The Contract Labour Act earlier specified that contractors required license and registration for 20 workers and above. This number was raised to 50. The system of contract labour in the garment sector in Gurugram is a complicated mix of large-scale formal contractors to smaller, middlemen supplying a large pool of informal labour. Respondents interviewed for this study shared that most companies use several small, unregistered contractors and that often the principal employer too is not in conformity with the licensing provision of the Contract Labour Act. Raising the threshold for licensing and registration only ends up giving legal cover to ongoing practices which until this amendment were illegal and excludes more workers from the protection of labour laws.

- Increased limit for retrenchment and lay-off of workers

(Now included in the Industrial Relations Code 2020)

The Haryana government amended the law that required establishments with 100 or more workers to seek government permission to retrench/lay-off workers. The amendment increased the limit of workers to 300, citing that this would encourage firms to employ more workers (PTI 2018). In garment factories lay-offs are common and workers find themselves routinely out of work during lean seasons of production. The industry also has a host of small fabrication units that operate in a highly informal manner. Many such units spring up peak production periods to cater to the needs of the Tier 1 factories and often shut their operations as soon as the orders peter out.

- Threshold for applicability of Standing Orders raised in Industrial Relations Code 2020

Before the recent labour law reforms, the Industrial Employment (Standing Orders) Act, 1946 was applicable to “every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months”. This threshold has been raised to 300 (Section 28(1) of the Industrial Relations Code, 2020) thereby excluding most industrial establishments since it is known that India is a land of micro, small and medium enterprises (MSMEs) and that the garment manufacturing companies tend to have multiple units in the same geographical area, of which only a few would be employing 300 or more regular workers to make the Standing Order law applicable. By extension, with the fixed term employment being defined in the standing orders, if the establishment is exempted from adopting standing orders, then the workers of such establishment would be bereft of the modicum of protection that provisions of fixed term employment offered. It would appear that the government gives with one hand and takes away with the other.



The Haryana MSME Policy 2019<sup>50</sup> states that there are more than 1,00,000 MSMEs in the state of Haryana, primarily in the automobile, food & beverages, textiles, engineering, and metals sector. Medium enterprises defined as having investment in the range of 5-10 crores are primarily located in Panipat, Faridabad, and Gurugram.

#### Relevant Schemes and Policies of the Haryana Labour Department

The Haryana Labour Department receives and maintain data and statistics related to the functioning of and compliance to labour laws by factories and establishments registered with the department under multiple platforms and schemes. These include inspections conducted by the department in factories, mandatory returns filed by factories to the labour department, information provided to the Haryana Labour Welfare Board on number of workers including disaggregated data on male and female workers etc. The section below provides brief descriptions of the different policies and schemes and platforms of the Haryana Labour Department and the kinds of data procured and maintained through each.

#### **Transparent Inspection Policy, (TIP) 2016**

The Transparent Inspection Policy, 2016 was introduced by the government in order to simplify the regulation of businesses, as stated in its first objective. The move to “improve” the existing system was explained by citing inefficiencies in the existing system: *“Although inspection guidelines have been framed in the past, but these have not been implemented properly; besides there have been some complaints of adhocism[sic] in the inspections.”*<sup>51</sup> The policy also emphasises the need to adopt methods that utilise innovations in technology in conducting labour department functions.

**Third Party Certification Scheme:** In a bid to further simplify processes as part of the Ease of Doing Business strategy, factories have been allowed to conduct inspections by third party agencies and submit a report of the same annually to the labour department. This exempts these units from any further randomised inspections by the department. The certification is applicable for compliances related to:

- Factories Act
- Minimum Wages Act
- Payment of Wages Act
- Contract Labour Act
- Payment of gratuity Act
- Bonus Act
- Maternity Benefit Act

Factories conducting annual audits and submitting reports will not be liable for inspection under the TIP. However, the scheme has a provision for ‘complaint based inspection’ wherein in case of a complaint against a factory by workers/trade unions, the Labour Commissioner (LC) may issue a direction for inspection. Discrepancies in compliances pointed out in the audit report will be monitored directly by the LC. But the official guidelines also state that establishments will have ‘ample opportunities’ to personal hearings by the LC regarding the status of the compliance and the steps taken towards it<sup>52</sup>. In other words, establishments can continue to violate the law and then be

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<sup>50</sup> See the policy at

<https://cdnbbsr.s3waas.gov.in/s3f48c04ffab49ff0e5d1176244fd6b65c/uploads/2020/08/2020081089.pdf>

<sup>51</sup> Haryana Transparent Inspection Policy, 2016:

<https://hrylabour.gov.in/staticdocs/labourpolicies/Transparent%20Inspection%20Scheme.pdf>

<sup>52</sup> [http://storage.hrylabour.gov.in/uploads/labour\\_laws/Y2018/May/W1/D04/1525434361.pdf](http://storage.hrylabour.gov.in/uploads/labour_laws/Y2018/May/W1/D04/1525434361.pdf)

given 'ample opportunities' through counselling to fix the issues, failing which the establishment can pay a fine and continue business-as-usual especially since 'action' to be taken has not been defined in the Transparent Inspection Policy, 2016.

**Factory Inspections:** The inspection of factories has been divided between the factory wing of the labour department and the labour wing. The former conducts inspections mainly to check compliance of units with industrial health and safety measure, while the latter conducts inspections to ensure compliance with the Minimum Wages Act and the use of contract labour.

*Inspections by the Factory Wing:*

Factories have been categorised into

- 1.) Major Accidents Hazardous- inspected once every year
- 2.) Hazardous-inspected once in two years, and
- 3.) Non-Hazardous-inspected once in every five years

The list of factories to be inspected is generated per quarter through a randomised automated process that selects from a centralised database maintained by the Chief Inspector of Factories, Chandigarh, Haryana. The Inspecting Officer is also chosen through this randomised, automated process. The complete list including the factory to be inspected and the inspecting officer is available for viewing on the website of the Central Inspection System<sup>53</sup>.

*Inspections by the Labour Wing:*

The list of factories to be inspected by the labour department is also generated through the randomised selection process by the head office in Chandigarh. However, it is decided based on data related to the payment of minimum wages at the units, the use of contract labour at the units among other factors. The policy does not clearly outline how this data is generated other than that it is based on complaints and observations received by the department. The policy outlines that the role of the labour wing is to maintain industrial peace and address grievances and therefore its role in inspection of factories is only limited to compliance by factories on the payment of minimum wages and use of contract labour. *"The primary concern would be non-entry of names of workers on the muster roll, the non-payment of wages or less payment of wages for which legal action will be initiated after giving the employer ample opportunity for taking corrective action."*<sup>54</sup>

While the labour wing has not been given any authority for inspections concerning any other labour law violation, however there is a provision for prompt inspections in response to complaints filed by workers/unions<sup>55</sup>.

– **Data procured by Inspecting Officers under the Transparent Inspection Policy**

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<sup>53</sup> See [https://cisharyana.in/home/industries\\_list?distt\\_id=5&dept\\_id=1](https://cisharyana.in/home/industries_list?distt_id=5&dept_id=1)

An SOP is available at <https://cisharyana.in/home/sop>

<sup>54</sup> Haryana Transparent Inspection Policy 2016 p. 7

<sup>55</sup> Transparent Inspection Policy Section 4: "Complaint Based Inspection. The complaints received through CM complaints cell, / District Administration / Trade Unions / Workers or complaint related to existing dispute / litigation shall be attended promptly. If required, the inspection in pursuance of such complaints shall also be conducted besides the inspections under the Policy but with the prior intimation / approval of the Labour Commissioner, Haryana.

Complaints received directly from the workers or by Unions / representatives with critical issues and those given in general must be distinguished and action be taken as per priority."

**Violations recorded factory wise under Factories Act, 1948**

- Workers employed
- Number of workers employed disaggregated into male and female
- Is Register of Adult Workers in Form No.12 maintained?

**Work hours:**

- Is any adult worker employed for more than 48 hours in any week?
- Is any worker required to work for hours other than specified in the notice of periods of work?
- Is Notice of Periods of work in Form No.11 displayed and copies of it sent in duplicate to the Inspector?
- Is any worker employed for more than nine hours on any day?
- Is Over Time Muster Roll in Form No.10 maintained?

**Wages:**

- Was substituted holiday given to any person employed on the first day of any week?
- Are overtime wages paid in accordance with Section 59?

**Leave with wages:**

- Is leave with wages granted in accordance with Section 79(1)?
- Are wages in lieu of leave paid in accordance with section 80 to the workers who either quit/ discharged from service?
- Is Register of Leave with wages in Form No.15 maintained?

**Accidents:**

- Are notices of accident sent in accordance with Section 88 and Rule 103?
- Is Register of Accidents & Dangerous Occurrences in Form No.26 maintained?

**Violations recorded factory wise under Minimum Wages Act**

- Are workers being paid the minimum wages fixed by the govt.?
- Details, in case they are not
- Whether OT work is paid at double the rate of ordinary wages?
- Whether workers are given weekly rest?
- Whether workers receive wage slips?

**– Publicly Available Records/Data from the Central Inspection System (CIS) Database:**

The website of the CIS regularly uploads the quarterly list of factories to be inspected by the different wings of the labour department, along with the name and contact details of the Inspecting Officer<sup>56</sup>.

*List of Factories:* The website also has the entire list of units established in Haryana that are liable to be inspected under the policy. The list can be filtered by district as well as by the inspecting department.

Link to units in Gurugram: [http://cisharyana.in/home/industries\\_list?distt\\_id=5&dept\\_id=1](http://cisharyana.in/home/industries_list?distt_id=5&dept_id=1)

***Haryana Udhyan Memorandum Portal***<sup>57</sup>

<sup>56</sup> See [https://cisharyana.in/home/inspection\\_schedule\\_list](https://cisharyana.in/home/inspection_schedule_list)

<sup>57</sup>SOP is available at <http://harudhyam.edisha.gov.in/notice/HUM%20SOPv1.1.pdf>

This is an initiative by the Haryana Labour Department to bring under one portal all the factories and units established in the state including details of workers employed within each factory. Employers are asked to register with the portal and can then fill in the details regarding their establishment as well as the total number of workers employed within the unit. Employers are also asked to disclose other details regarding the workers employed. The aim is to provide the department one macro database that houses all relevant details pertaining to industrial establishments and the labour employed in the state of Haryana.

– **Data available on public domain**

List of factories registered with the HUM portal: the website allows public users to view the name and address of all the units that have registered at the portal, district and block wise.

Link to units in Gurugram Municipal Corporation (GMC):

[http://harudhyam.edisha.gov.in/du/blmc\\_wise\\_detail?state\\_code=6&dis\\_code=62&blk\\_mc\\_code=248576&rural\\_urban\\_flag=urban](http://harudhyam.edisha.gov.in/du/blmc_wise_detail?state_code=6&dis_code=62&blk_mc_code=248576&rural_urban_flag=urban)

Link to Garment Units in Gurugram Block Level (BL):

[http://harudhyam.edisha.gov.in/du/blmc\\_wise\\_detail?state\\_code=6&dis\\_code=62&blk\\_mc\\_code=477&rural\\_urban\\_flag=rural](http://harudhyam.edisha.gov.in/du/blmc_wise_detail?state_code=6&dis_code=62&blk_mc_code=477&rural_urban_flag=rural)

Of the 1,355 units listed under GMC, filtering by the NIC code: “Division 14 - Manufacture of wearing apparel” yields a list of only 47 units. Of these 47 units, well known manufacturers such as Modelama Exports Pvt. Ltd., and Pearl Global Industries Ltd. only list the main unit but none of the multiple subsidiary manufacturing units of the company. Thus, the information available on this portal is partial and limited. Of the 55 units listed under Gurugram BL, filtering by the same NIC code yields a list of zero units. This indicates that none of the larger garment units located in IMT Manesar has registered on this portal so far. In addition, none of the units display worker details in public domain on this site.

***Shram Suvidha Portal-Integrated Unified Single Return:***

This is a Central Ministry initiative that allows establishments to file integrated returns for all compliances under Employee State Insurance Corporation (ESIC), Employee Provident Fund Organisation (EPFO) and Contract Labour Acts. Establishments are issued a Labour Identification Number that will be applicable under the different enforcement agencies instead of the old separate employer codes<sup>58</sup>.

At present the self-declaration form collects information from each factory regarding data on total number of workers employed, segregated into male/female as well as contract/registered labour; regarding paid leaves; canteen and crèche facilities; and accidents. Manager of every factory will have to furnish the following information (Form No. 21) to the Chief Inspector (or any other official appointed by the state government).

Nine states, including Haryana have adopted this format till date<sup>59</sup>.

Workers employed:

- Total number of workers employed daily disaggregated into men and women

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<sup>58</sup> <https://shramsuvudha.gov.in/knowyourlin.action>

<sup>59</sup> For more information, see <https://shramsuvudha.gov.in/stateIntegration>

- Total number of workers employed in a year disaggregated into men and women

Work hours:

- Normal hours worked per week disaggregated into men and women
- Total number of days worked in the year
- Total number of hours worked including over time

Leave with wages:

- I. Total number of workers entitled to annual leave with wages disaggregated into men and women
- II. Total number of workers granted leave during the year disaggregated into men and women
- III. Total number of workers dismissed or whose services were terminated in the year; Number of such workers who were paid wages in lieu of leave

Accidents:

- I. Total number of accidents in the year
- II. Number of persons killed disaggregated into men and women
- III. Number of persons injured disaggregated into men and women
- IV. Number of injured persons who returned to work

#### Mechanism to Address Worker Grievances/Dispute Resolution Process

Dispute resolution methods aimed at labour conflicts in India, as outlined in the Industrial Disputes Act, 1948, can be mapped into a binary structure of adjudication and all other processes of negotiation. Multiple methods of resolution exist within the latter, including conciliation, mediation and arbitration. The Act also outlines processes of addressing worker grievances before the stage of raising a dispute. The following section maps the different stages of grievance redressal and dispute resolution mechanisms available to workers under the existing labour laws.

For the purpose of this study, all processes of conflict resolution that involve the formal engagement of the labour department have been categorised as “Formal Mechanisms”. Subsequently, all other methods, alternate conflict resolution mechanisms accessed that do not involve the labour department formally have been clubbed into “Informal Mechanisms”. The ID Act specifically provides for the constitution of two committees within workplaces that cater to mechanisms of grievance resolution. These are:

#### **1. Works Committee**

A Works Committee (WC) is to be constituted in establishments with 100 or more employees as per Section 3 of the ID Act. The Committee is to have a maximum of 20 members with equal representation from employers and workmen. The WC as per Section 3 of the ID Act works to “promote measures for securing and preserving amity and good relations between the employer and the workmen...” The Committee takes up issues and grievances of workers related to the policies of the establishment. Workers may raise complaints through the WC. The latter then takes up the issue and addresses it through a formal process.

#### **2. Grievance Redressal Committee**

Establishments with less than 100 employees, but more than 20, are to constitute **Grievance Redressal Committees** (GRC) as per **Section 9C** of the ID Act. The GRC takes up grievances of individual workers. The Act further provides for the worker to approach the employer in case they are not satisfied with the resolution by the GRC. The employer is to then act on the grievance within a period of a month.

In both cases, worker(s) can also directly approach the Labour Department to raise a dispute for conciliation at any stage of the grievance.

### **Resolution Mechanisms without involvement of the Labour Department**

Worker(s) can raise complaints within their workplaces with the designated authorities on issues related to laws, company policies, payment related issues, working conditions etc. Authorities approached can include the Works Committee/Grievance Redressal Committee as well as any other internal committees (such as within the human resources or personnel department) created within the establishment.

At this stage, the designated authority can look into the complaint and resolve it to the worker(s)' satisfaction. It may on the other hand either ignore it or resolve it in a manner that disadvantages the worker.

Worker(s) can also enter into a negotiation with the management to settle grievances and address demands. These can be between the management and the trade union (if any) via collective bargaining or the recognised workers' collective. Worker(s) may also choose to get legal support/advice at any stage.

Both parties may also choose to settle through conciliation or voluntary arbitration processes.

In case efforts made by the worker(s) to reach a settlement with the management through these means fail, they may choose to formally engage the labour department by raising a dispute or filing a claim under the relevant Acts. The diagram below outlines the mechanism for formal resolution at the labour department.

## Formal Resolution Mechanisms Engaging the Labour Department

